

1 Attorneys of every California city with a population greater than 750,000, and to Settling
2 Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons to lead
3 and lead compounds (“Lead”) contained in Covered Products without first providing a clear and
4 reasonable Proposition 65 warning.

5 1.3 Settling Defendant is a corporation or other business entity that manufactures,
6 distributes, sells or offers for sale Covered Products that are sold or offered for sale or has done so
7 in the past.

8 1.4 On August 23, 2013, CEH filed the Complaint in the above-captioned matter,
9 naming Settling Defendant as a defendant in the action.

10 1.5 For purposes of this Consent Judgment only, CEH and Settling Defendant (the
11 “Parties”) stipulate that this Court has jurisdiction over the allegations of violations contained in
12 the Complaint and personal jurisdiction over each Settling Defendant as to the acts alleged in the
13 Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to
14 enter this Consent Judgment as a full and final resolution of all claims which were or could have
15 been raised in the Complaint based on the facts alleged therein with respect to Covered Products
16 manufactured, distributed, offered for sale or sold by Settling Defendant.

17 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the
18 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with
19 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
20 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
21 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
22 other pending or future legal proceedings. This Consent Judgment is the product of negotiation
23 and compromise and is accepted by the Parties solely for purposes of settling, compromising, and
24 resolving issues disputed in this Action.

25 **2. INJUNCTIVE RELIEF**

26 2.1 **Specification Compliance Date.** To the extent it has not already done so, no more
27 than thirty (30) days after the date of entry of this Consent Judgment, if Settling Defendant

1 purchases any Covered Products from a third party that is not under common ownership (a
2 “Covered Product Supplier”), Settling Defendant shall provide the Reformulation Level set forth
3 in Section 2.2 to each Covered Product Supplier and shall instruct each such Covered Product
4 Supplier to provide it with Covered Products that comply with the Reformulation Level set forth
5 in Section 2.2. If in the future Settling Defendant purchases Covered Products from a Covered
6 Product Supplier that it has not previously provided with instructions regarding the Reformulation
7 Level set forth in Section 2.2, Settling Defendant shall provide the Reformulation Level set forth
8 in Section 2.2 to such Covered Product Supplier prior to placing an initial order for Covered
9 Products and instruct the Covered Product Supplier to provide it with Covered Products that
10 comply with the Reformulation Level set forth in Section 2.2. Settling Defendant shall retain and
11 make available to CEH upon reasonable written request records of communications sent to and
12 received from Covered Product Suppliers that are related to the requirement of this Section 2.1 for
13 a period of five (5) years from the date of entry of this Consent Judgment (the “Effective Date”).

14 **2.2 Reformulation of Covered Products.** Settling Defendant shall not purchase,
15 manufacture, have manufactured by others, ship, sell or offer for sale a Covered Product that will
16 be sold or offered for sale to California consumers after April 1, 2016 (the “Reformulation
17 Deadline”) that contains a concentration of more than thirty (30) parts per billion (“ppb”) Lead by
18 weight (the “Reformulation Level”), such concentration to be determined by use of a test
19 performed by an accredited laboratory using inductively coupled plasma mass spectrometry (ICP-
20 MS) equipment with a level of detection of at least ten (10) ppb. Covered Products sold by
21 Settling Defendant to third parties, including distributors or retailers, before the reformulation
22 Deadline, or that are otherwise already in the distribution chain before the Reformulation
23 Deadline, shall not be in violation of Section 2.2 of this Agreement.

24 **2.3 Testing.** Except as provided in Section 2.5, to ensure compliance with Section 2.2,
25 Settling Defendant shall conduct random testing of Covered Products and take the follow-up
26 actions described in this section (“Validation Testing”), provided however, that if Settling
27 Defendant purchases Covered Products from another Settling Defendant, only the Settling

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1 Defendant that sold the Covered Products to the other Settling Defendant need perform Validation
2 Testing on those Covered Products.

3 2.3.1 Covered Products To Be Tested. The Covered Products to
4 be tested shall be for each type of Covered Product Settling Defendant manufactures or arranges to
5 be manufactured. The Validation Testing shall be conducted on each production lot of each type
6 of Covered Product. Such Validation Testing shall be performed on samples drawn randomly
7 from each production lot of each type of Covered Product. For purposes of this Consent Judgment
8 a “type” of a Covered Product is either an individual Covered Product as identified by SKU or
9 other product identifier or one which CEH and a Settling Defendant have agreed has materially the
10 same characteristics based on the type, supplier and amount of ginger and/or molasses used in its
11 recipe or formula.

12 2.3.2 Methods of Testing. Prior to Settling Defendant’s first sale
13 or distribution of a Covered Product that will be sold or offered for sale to California consumers
14 after the Effective Date, Settling Defendant shall conduct Validation Testing pursuant to one of
15 the following methods: (1) the FDA sample preparation protocol discussed in the method entitled
16 “Elemental Analysis Manual: Section 4.4 Inductively Coupled Plasma-Atomic Emission
17 Spectrometric Determination of Elements in Food Using Microwave Assisted Digestion”¹ or (2) a
18 microwave- or heat-assisted acid digestion method employing high-purity reagents, provided that
19 the laboratory digests at least 0.5 grams of each sample taken from a properly homogenized
20 complete package of Covered Product, analyzes each sample undiluted by ICP-MS, and uses an
21 instrument quantitation limit corresponding to less than three (3) micrograms of Lead in the
22 finished product.

23 2.3.3 Laboratories Conducting Validation Testing. Any
24 Validation Testing shall be performed by a laboratory meeting at least one of the following
25 standards: Environmental Laboratory Certification from the State of California, Department of
26 Health Services, Environmental Laboratory Accreditation Program; NSF International; American

27 _____
28 ¹ The referenced FDA test protocol may be found at
<http://www.fda.gov/Food/FoodScienceResearch/LaboratoryMethods/ucm204245.htm>.

1 Settling Defendant may treat that type of Covered Product as meeting the Reformulation Level for
2 that Validation Testing cycle as long as no result for a sample exceeds fifty (50) ppb Lead, subject
3 to the following confirmatory process. If a sample exceeds fifty (50) ppb Lead, Settling
4 Defendant may collect three (3) more samples of the type of Covered Product from the same
5 production lot and have those samples tested in accordance with Section 2.3. Provided that none
6 of those additional test results exceed forty (40) ppb, those additional test results shall then be used
7 in place of the sample that exceeded fifty (50) ppb in determining whether the arithmetic mean of
8 Validation Test results for the Covered Product exceeded the Reformulation Level.

9 2.3.6 Records. The testing reports and results of the Validation
10 Testing performed pursuant to this Consent Judgment shall be retained by Settling Defendant for
11 four (4) years and made available to CEH upon reasonable request.

12 2.4 **Good Faith Commitment to Pursue Further Lead Reduction.** Except as
13 provided in Section 2.5, Settling Defendant shall continue to take, or cause to be taken, good faith
14 and commercially reasonable efforts to further reduce the Lead content of its Covered Products
15 with a goal of Covered Products having a consistent Lead content of seventeen (17) ppb or less.
16 These efforts shall include, at a minimum, efforts to further adjust recipes and formulas that will
17 reduce Lead content in Covered Products and attempts to secure Covered Product ingredients such
18 as molasses and ginger with lower Lead content. Within fifteen (15) days of the Reformulation
19 Deadline, and annually thereafter for two more years, Settling Defendant shall submit to CEH a
20 written report of the activities it has undertaken to effectuate its good faith commitment under this
21 paragraph. If Settling Defendant has test results demonstrating that all of its Covered Products
22 have a consistent Lead content of seventeen (17) ppb or less and it provides such documentation to
23 CEH, or if CEH and Settling Defendant otherwise agree in writing, then Settling Defendant need
24 not submit any subsequent annual report to CEH pursuant to this paragraph.

25 2.5 **Products Not Subject to Testing.** The requirements of Section 2.3 and 2.4 shall
26 not apply to any Covered Product for which CEH and Settling Defendant agree in writing that
27 such sections shall not apply to a particular Covered Product provided that Settling Defendant has

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1 no test results demonstrating lead levels above thirty (30) ppb on such Covered Product in its
2 possession. With respect to new Covered Products introduced after the Effective Date, if Settling
3 Defendant provides CEH with a reasonable and sufficient showing that none of the new Covered
4 Products will not contain more than 20 ppb lead (either through a lead contribution exercise or
5 other means), CEH will not unreasonably withhold its agreement that Sections 2.3 and 2.4 do not
6 apply to the new Covered Products.

7 **3. ENFORCEMENT**

8 3.1 **General Enforcement Provisions.** CEH may, by motion or application for an
9 order to show cause before this Court, enforce the terms and conditions contained in this Consent
10 Judgment. Any action to enforce alleged violations of Section 2.2 by Settling Defendant shall be
11 brought exclusively pursuant to this Section 3, and as applicable be subject to the meet and confer
12 requirement of Section 3.2.4.

13 3.2 **Enforcement of Reformulation Commitment.**

14 3.2.1 Notice of Violation. In the event that CEH identifies a
15 Covered Product that was sold or offered for sale to California consumers at any time following
16 the Reformulation Deadline for which CEH has laboratory test results showing that the Covered
17 Product has a Lead level exceeding the Reformulation Level, CEH may issue a Notice of
18 Violation pursuant to this Section. Such Notice of Violation shall be based upon a test result
19 sufficient to establish an exceedance of the Reformulation Level as it is to be evaluated under
20 Section 2.3; the results employed shall also meet the sampling, testing, and laboratory criteria
21 specified under Section 2.3.

22 3.2.2 Service of Notice of Violation and Supporting
23 Documentation.

24 3.2.2.1 Subject to Section 3.2.1, the Notice of Violation shall
25 be sent to the person(s) identified in Exhibit A to receive notices for Settling Defendant, and must
26 be served within forty-five (45) days of the date the Covered Products at issue were purchased or
27 otherwise acquired by CEH, provided, however, that CEH may have up to an additional forty-five

1 (45) days to send the Notice of Violation if, notwithstanding CEH's good faith efforts, the test
2 data required by Section 3.2.2.2 below cannot be obtained by CEH from its laboratory before
3 expiration of the initial forty-five (45) day period.

4 3.2.2.2. The Notice of Violation shall, at a minimum, set
5 forth: (a) the date the alleged violation was observed; (b) the location at which the Covered
6 Products were offered for sale; (c) a description of the Covered Products giving rise to the alleged
7 violation, including the name and address of the retail entity from which the sample was obtained
8 and if available information that identifies the product lot, such as the "best by" or "sell by" date;
9 and (d) all test data obtained by CEH regarding the Covered Products and supporting
10 documentation sufficient for validation of the test results, including any laboratory reports, quality
11 assurance reports and quality control reports associated with testing of the Covered Products.

12 3.2.3 Notice of Election of Response. No more than thirty (30)
13 days after effectuation of service of a Notice of Violation, Settling Defendant shall provide written
14 notice to CEH whether it elects to contest the allegations contained in a Notice of Violation
15 ("Notice of Election"). Failure to provide a Notice of Election within thirty (30) days of
16 effectuation of service of a Notice of Violation shall be deemed an election to contest the Notice
17 of Violation.

18 3.2.3.1 If a Notice of Violation is contested, the Notice of
19 Election shall include all then-available documentary evidence regarding the alleged violation,
20 including all test data, if any. If Settling Defendant or CEH later acquires additional test or other
21 data regarding the alleged violation, it shall notify the other party and promptly provide all such
22 data or information to the party. Any test data used to contest a Notice of Violation shall meet the
23 criteria of Section 2.3.

24 3.2.4 Meet and Confer. If a Notice of Violation is contested, CEH
25 and Settling Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30)
26 days of serving a Notice of Election contesting a Notice of Violation, and if no enforcement action
27 or application has been filed by CEH pursuant to Section 3.1, Settling Defendant may withdraw

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1 the original Notice of Election contesting the violation and serve a new Notice of Election
2 conceding the violation, provided, however, that, in this circumstance, Settling Defendant shall
3 pay \$2,500 in addition to any payment required under this Consent Judgment. At any time, CEH
4 may withdraw a Notice of Violation, in which case for purposes of this Section 3.2 the result shall
5 be as if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of
6 Violation results within thirty (30) days of a Notice of Election to contest, CEH may file an
7 enforcement motion or application pursuant to Section 3.1. In any such proceeding, CEH may
8 seek whatever fines, costs, penalties, attorneys' fees or other remedies are provided by law for
9 failure to comply with the Consent Judgment.

10 3.2.5 Non-Contested Matters. If Settling Defendant elects not to
11 contest the allegations in a Notice of Violation, it shall identify on a confidential basis to CEH (by
12 proper name, address of principal place of business and telephone number) the person or entity
13 that sold the Covered Products to Settling Defendant and the manufacturer and other entities in the
14 upstream chain of distribution of the Covered Product, provided that such information is
15 reasonably available. In addition, Settling Defendant shall undertake corrective action and make
16 payments, if any, as set forth below.

17 3.2.5.1 If the test data provided by CEH in support of the
18 Notice of Violation reports a Lead content in a Covered Product above the Reformulation Level
19 but less than sixty (60) ppb, then Settling Defendant shall take the following corrective action and
20 make the following payments, if any:

21 A. Settling Defendant shall include in its Notice of Election a
22 detailed description with supporting documentation of the corrective action that it has undertaken
23 or proposes to undertake to address the alleged violation. Any such correction shall, at a
24 minimum, provide reasonable assurance that Settling Defendant has stopped all Covered Products
25 having the same lot number or lot identifier, such as "best by" or "sell by" date, as that of the
26 Covered Products identified in CEH's Notice of Violation from being sold or offered for sale in
27 California. Settling Defendant shall make available to CEH for inspection and/or copying records

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1 and correspondence regarding the corrective action. If there is a dispute over the corrective action,
2 Settling Defendant and CEH shall meet and confer pursuant to Section 3.2.4 before seeking any
3 remedy in court. In no case shall CEH issue more than one NOV per manufacturing lot of a
4 particular Covered Product.

5 B. If the Notice of Violation is the first Notice of Violation
6 received by Settling Defendant under Section 3.2.5.1 that was not successfully contested or
7 withdrawn, no payment shall be required by Settling Defendant. If the Notice of Violation is the
8 second, third or fourth Notice of Violation received by a Settling Defendant under Section 3.2.5.1
9 that was not successfully contested or withdrawn, Settling Defendant shall pay \$5,000 for each
10 Notice of Violation. If Settling Defendant has received more than four Notices of Violation under
11 Section 3.2.5.1 that were not successfully contested or withdrawn, Settling Defendant shall pay
12 \$10,000 for each subsequent Notice of Violation. If Settling Defendant produces with its Notice
13 of Election Test Data from the manufacturer or supplier of the Covered Product that: (i) was
14 conducted prior to the date CEH purchased the Covered Product that is the subject of the Notice of
15 Violation; (ii) was conducted on Covered Product that was from the same manufacturing lot as the
16 Covered Product that is the subject of the Notice of Violation; and (iii) consistently demonstrates
17 Lead levels below the Reformulation Level as evaluated under Section 2.3, then any payment
18 under this Section shall be decreased by fifty percent.

19 3.2.5.2 If the test data provided by CEH in support of the
20 Notice of Violation reports a Lead content in a Covered Product of more than sixty (60) ppb, then
21 Settling Defendant shall take the following corrective action and make the following payments:

22 A. Settling Defendant shall include in its Notice of Election a
23 detailed description with supporting documentation of the corrective action that it has undertaken
24 or proposes to undertake to address the alleged violation. Any such correction shall, at a
25 minimum, provide reasonable assurance that all Covered Products having the same lot number or
26 lot identifier, such as "best by" or "sell by" date, as that of the Covered Product identified in
27 CEH's Notice of Violation (the "Noticed Covered Products") will not be thereafter sold or offered

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1 for sale to California consumers, that the Noticed Covered Products are removed from the
2 California market and that the Settling Defendant has sent instructions to any of its stores and/or
3 customers that offer the Noticed Covered Products for sale to cease offering the Noticed Covered
4 Products for sale to California consumers and to either return all such Noticed Covered Products
5 to Settling Defendant for destruction, or to directly destroy such Noticed Covered Products.
6 Settling Defendant shall keep and make available to CEH for inspection and copying records and
7 correspondence regarding the market withdrawal and destruction of the Noticed Covered Products.
8 If there is a dispute over the corrective action, Settling Defendant and CEH shall meet and confer
9 before seeking any remedy in court. In no case shall CEH issue more than one NOV per
10 manufacturing lot of Covered Product.

11 B. If the Notice of Violation is the first, second, third or fourth
12 Notice of Violation received by Settling Defendant under Section 3.2.5.2 that was not successfully
13 contested or withdrawn, Settling Defendant shall pay \$16,000 for each Notice of Violation. If
14 Settling Defendant has received more than four Notices of Violation under Section 3.2.5.2 that
15 were not successfully contested or withdrawn, Settling Defendant shall pay \$24,000 for each
16 Notice of Violation. If Settling Defendant produces with its Notice of Election test data on the
17 Covered Product that: (i) was conducted prior to the date CEH purchased the Covered Product
18 that is the subject of the Notice of Violation; (ii) was conducted on the same or same type of
19 Covered Product; and (iii) demonstrates Lead levels below the Reformulation Level as evaluated
20 under Section 2.3.4, then any payment under this Section shall be decreased by fifty percent.

21 3.2.6 Payments. Any payments under Section 3.2 shall be made
22 by check payable to the "Lexington Law Group" and shall be paid within thirty (30) days of
23 service of a Notice of Election triggering a payment and which shall be used as reimbursement for
24 costs for investigating, preparing, sending and prosecuting Notices of Violation, and to reimburse
25 attorneys' fees and costs incurred in connection with these activities.

26 3.3 **Repeat Violations**. If Settling Defendant has received four (4) or more Notices of
27 Violation that were not successfully contested or withdrawn in any twelve (12) month period then,

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1 at CEH's option, CEH may seek whatever fines, costs, penalties, attorneys' fees or other remedies
2 that are provided by law for failure to comply with the Consent Judgment. Prior to seeking such
3 relief, CEH shall meet and confer with Settling Defendant for at least thirty (30) days to determine
4 if Settling Defendant and CEH can agree on measures that Settling Defendant can undertake to
5 prevent future violations.

6 **4. PAYMENTS**

7 4.1 **Payments by Settling Defendant.** Within five (5) days of the entry of this
8 Consent Judgment, Settling Defendant shall pay amounts specified on Exhibit A.

9 4.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall
10 be paid in four (4) separate checks and delivered as set forth below. Any failure by Settling
11 Defendant to comply with the payment terms herein shall, at CEH's discretion, be subject to a
12 stipulated late fee in the amount of \$100 for each day after the delivery date the payment is
13 received. The late fees required under this Section shall be recoverable, together with reasonable
14 attorneys' fees, in an enforcement proceeding brought pursuant to Section 3 of this Consent
15 Judgment. The funds paid by Settling Defendant shall be allocated as set forth on Exhibit A
16 between the following categories and made payable as follows:

17 4.2.1 A civil penalty pursuant to Health & Safety Code §
18 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety
19 Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental
20 Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
21 payment shall be made payable to OEHHA and associated with taxpayer identification number 68-
22 0284486. This payment shall be delivered as follows:

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24 For United States Postal Service Delivery:
25 Attn: Mike Gyurics
26 Fiscal Operations Branch Chief
27 Office of Environmental Health Hazard Assessment
28 P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

1 For Non-United States Postal Service Delivery:
2 Attn: Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 1001 I Street, MS #19B
6 Sacramento, CA 95814

7 The CEH portion of the civil penalty payment shall be made payable to the Center For
8 Environmental Health and associated with taxpayer identification number 94-3251981. This
9 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
10 94117.

11 4.2.2 A payment in lieu of civil penalty to CEH pursuant to Health
12 & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH shall
13 use such funds to continue its work educating and protecting people from exposures to toxic
14 chemicals, including heavy metals. In addition, as part of its Community Environmental Action
15 and Justice Fund, CEH will use four (4) percent of such funds to award grants to grassroots
16 environmental justice groups working to educate and protect people from exposures to toxic
17 chemicals. The method of selection of such groups can be found at the CEH web site at
18 www.ceh.org/justicefund. The payment pursuant to this Section shall be made payable to the
19 Center For Environmental Health and associated with taxpayer identification number 94-3251981.

20 4.2.3 A reimbursement of a portion of CEH's reasonable
21 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
22 payable to the Lexington Law Group and associated with taxpayer identification number 94-
23 3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
24 Francisco, CA 94117.

25 **5. MODIFICATION AND DISPUTE RESOLUTION**

26 5.1 **Modification.** This Consent Judgment may be modified from time to time by
27 express written agreement of the Parties, with the approval of the Court, or by an order of this
28 Court upon motion and in accordance with law.

1 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
2 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
3 modify the Consent Judgment.

4 **6. CLAIMS COVERED AND RELEASE**

5 6.1 This Consent Judgment is a full, final and binding resolution between CEH on
6 behalf of itself and the public interest and each Settling Defendant and Settling Defendant's
7 parents, subsidiaries, affiliated entities that are under common ownership, directors, officers,
8 employees, agents, shareholders, successors, assigns, and attorneys ("Defendant Releasees"), and
9 all entities to which Settling Defendant distributes or sells Covered Products, including but not
10 limited to distributors, wholesalers, customers, retailers, franchisees, licensors and licensees
11 ("Downstream Defendant Releasees"), of any violation of Proposition 65 based on failure to warn
12 about alleged exposure to Lead contained in Covered Products that were sold, distributed or
13 offered for sale by Settling Defendant prior to the Effective Date.

14 6.2 CEH, for itself, its agents, successors and assigns, releases, waives, and forever
15 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream
16 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
17 common law claims that have been or could have been asserted by CEH individually or in the
18 public interest regarding the failure to warn about exposure to Lead arising in connection with
19 Covered Products manufactured, distributed or sold by Settling Defendant prior to the Effective
20 Date.

21 6.3 Compliance with the terms of this Consent Judgment by Settling Defendant shall
22 constitute compliance with Proposition 65 by Settling Defendant, its Defendant Releasees and its
23 Downstream Defendant Releasees with respect to any alleged failure to warn about Lead in
24 Covered Products manufactured, distributed or sold by Settling Defendant after the Effective Date.

25 **7. PROVISION OF NOTICE**

26 7.1 When CEH is entitled to receive any notice under this Consent Judgment, the
27 notice shall be sent by first class and electronic mail to:

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1 Eric S. Somers
2 Lexington Law Group
3 503 Divisadero Street
4 San Francisco, CA 94117
5 esomers@lexlawgroup.com

6 7.2 When Settling Defendant is entitled to receive any notice under this Consent
7 Judgment, the notice shall be sent by first class and electronic mail to the person(s) identified in
8 Exhibit A.

9 7.3 Any Party may modify the person and address to whom the notice is to be sent by
10 sending the other Party notice by first class and electronic mail.

11 **8. COURT APPROVAL**

12 8.1 This Consent Judgment shall become effective as a contract upon the date signed
13 by CEH and Settling Defendant, whichever is later, provided however, that CEH shall also prepare
14 and file a Motion for Approval of this Consent Judgment and each Settling Defendant shall
15 support approval of such Motion.

16 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
17 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

18 **9. GOVERNING LAW AND CONSTRUCTION**

19 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
20 California.

21 **10. ATTORNEYS' FEES**

22 10.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
23 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs
24 unless the unsuccessful Party has acted with substantial justification. For purposes of this Consent
25 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
26 Discovery Act of 1986, Code of Civil Procedure §§2016.010, et seq.

27 10.2 Notwithstanding Section 10.1, a Party who prevails in a contested enforcement
28 action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of
Civil Procedure §1021.5 against a Party that acted with substantial justification. The Party

1 seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and this
2 provision shall not be construed as altering any procedural or substantive requirements for
3 obtaining such an award.

4 10.3 Nothing in this Section 10 shall preclude a party from seeking an award of
5 sanctions pursuant to law.

6 **11. ENTIRE AGREEMENT**


7 11.1 This Consent Judgment contains the sole and entire agreement and understanding
8 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
9 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
10 and therein. There are no warranties, representations, or other agreements between the Parties
11 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
12 other than those specifically referred to in this Consent Judgment have been made by any Party
13 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
14 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
15 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
16 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
17 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
18 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
19 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
20 whether or not similar, nor shall such waiver constitute a continuing waiver.

21 **12. SUBMISSION OF REPORTS AND DATA TO CEH**

22 12.1 For any report or information that a Settling Defendant submits to CEH pursuant to
23 this Consent Judgment, a Settling Defendant may make such a submission subject to the terms of
24 the protective order previously entered in this action and the protective order's terms shall apply to
25 the report or information as if it were still in effect.

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IT IS SO STIPULATED:

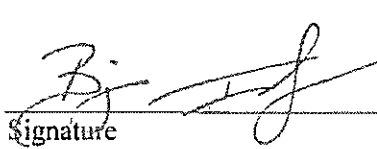
Dated: <u>22 JAN</u> , 2015	CENTER FOR ENVIRONMENTAL HEALTH  _____ Signature <u>CHRISTINE PIZZARO</u> _____ Printed Name <u>ASSOCIATE DIRECTOR</u> _____ Title
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Dated: _____, 2015	GENERAL MILLS, INC. _____ Signature _____ Printed Name _____ Title
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IT IS SO STIPULATED:

Dated: _____, 2015	CENTER FOR ENVIRONMENTAL HEALTH _____ Signature _____ Printed Name _____ Title
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Dated: <u>January 4</u> , 2015	GENERAL MILLS, INC.  _____ Signature <u>Benjamin Irby</u> _____ Printed Name <u>Business Unit Director</u> _____ Title
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EXHIBIT A
Settling Defendant

Settling Defendant: General Mills, Inc.

Defendant's Settlement Payment and Allocation:

Total Settlement Payment	\$ 145,000
Civil Penalty OEHHA Portion	\$ 14,400
Civil Penalty CEH Portion	\$ 4,800
Payment in Lieu of Civil Penalty	\$ 28,800
Attorneys' Fees and Costs	\$ 97,000

Person(s) to Receive Notices Pursuant to Section 7:

David Biderman
Perkins Coie LLP
1888 Century Park East Suite 1700
Los Angeles, CA 90067-1721

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EXHIBIT B

Laboratories Deemed To Comply with the Requirements of Section 2.3.3

Curtis & Tompkins Laboratories

Covance Laboratories

Exova, Inc.

K Prime, Inc.

Medallion Labs

National Food Laboratory, Inc.

Silliker, Inc.