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FILED
ALAMEDA COUNTY

OCT 29 2014

CLERK OF THE SUPERIOR COURT

By: [Signature] Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
UNLIMITED JURISDICTION

CENTER FOR ENVIRONMENTAL HEALTH,)

Plaintiff,)

v.)

KOOKABURRA LICORICE COMPANY, et)
al.,)

Defendants.)

Case No. RG14733545

**[PROPOSED] CONSENT JUDGMENT
AS TO JELLY BELLY CANDY
COMPANY, SWEET CANDY, LLC
AND DALLO & CO., INC.**

1. INTRODUCTION

1.1 The Parties to this Consent Judgment are the Center For Environmental Health, a California non-profit corporation ("CEH"), and the companies identified on Exhibit A (collectively, the "Settling Defendants"). Exhibit A further identifies the Settling Defendants as either Manufacturer Settling Defendants or Retailer/Distributor Settling Defendants. Plaintiff and Settling Defendants are defined as the "Parties." The Parties enter into this Consent Judgment

1 to settle certain claims asserted by CEH against Settling Defendants as set forth in the operative
2 complaint (the “Complaint”) in the above-captioned matter. This Consent Judgment covers
3 confectionery licorice products (“Licorice Products”) sold or offered for sale by Settling
4 Defendants.

5 1.2 Beginning in late 2012 and continuing through the present, CEH has served
6 multiple 60-day Notices of Violation under Proposition 65, alleging that entities including Settling
7 Defendants violated Proposition 65 by exposing persons to lead and lead compounds (“Lead”)
8 contained in Licorice Products without first providing a clear and reasonable Proposition 65
9 warning.

10 1.3 Each Settling Defendant is a corporation that manufactures, distributes, sells
11 or offers for sale Licorice Products in the State of California or has done so in the past.

12 1.4 On or about July 17, 2014, CEH filed the original Complaint in this matter.

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

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

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1 **2. INJUNCTIVE RELIEF**

2 2.1 **Reformulation Level.** The Reformulation Level for Licorice Products is
3 35 parts per billion (“ppb”) or less of Lead by weight. Such concentrations shall be determined by
4 use of a test using ICP-MS equipment with a level of detection of at least 20 ppb that meets
5 standard laboratory QA/QC requirements (“Test Protocol”).¹

6 2.2 **Specification Notice to Vendors of Reformulation Level.** To the extent it
7 has not already done so, no more than thirty (30) days after the date of entry of this Consent
8 Judgment (“Effective Date”), each Settling Defendant that purchases Licorice Products from a
9 third party shall provide the Reformulation Levels to each of its Licorice Products suppliers that
10 are not Settling Defendants and shall instruct each such Licorice Products supplier to provide it
11 with Licorice Products that do not exceed the Reformulation Levels. If during the next five (5)
12 year period, a Settling Defendant purchases Licorice Products from a third party that it has not
13 previously provided with instructions regarding the Reformulation Levels, the Settling Defendant
14 shall provide the Reformulation Levels to the new Licorice Product supplier when placing an
15 initial order for Licorice Products and instruct the new Licorice Product supplier to provide it with
16 Licorice Products that do not exceed the Reformulation Levels. Each Settling Defendant shall
17 retain records of communications sent to and received from suppliers that reflect its compliance
18 with the communication requirements of this Section for a period of three (3) years and shall make
19 such records available to CEH on reasonable request.

20 2.3 **Reformulation of Licorice Products:** After the Effective Date,
21 Manufacturer Settling Defendants shall not manufacture, purchase, ship, offer for sale, sell or
22 otherwise introduce into the California marketplace any Licorice Products that do not meet the
23 Reformulation Level. In addition, Manufacturer Settling Defendants and CEH agree that after
24 December 1, 2014, Manufacturer Settling Defendants shall not ship, offer for sale, sell or
25 otherwise introduce into the United States marketplace outside California any Licorice Products

26 _____
27 ¹ Sampling to assess compliance with the Reformulation Levels shall be based on testing of either
28 an aggregate of all licorice contained in a single and discrete package, bag or box as is typically
sold in retail, or the average results of any multiple test results from the same aggregate sample.

1 that do not meet the Reformulation Level.

2 2.4 **Good Faith Commitment to Further Lead Reduction:** During the three
3 (3) years following the Effective Date, each Manufacturer Settling Defendant shall continue in
4 good faith to attempt to further reduce the Lead content of its Licorice Products until such Licorice
5 Products have a consistent Lead content of less than 13 ppb. These efforts shall include, at a
6 minimum, efforts to further adjust recipes and formulas that will reduce Lead content in finished
7 Licorice Products and attempts to secure Licorice Product ingredients with lower Lead content.
8 On each of the first three anniversaries of the Effective Date, each Manufacturer Settling
9 Defendant shall submit to CEH a written report of the activities it has undertaken to effectuate its
10 good faith commitment to further reduction of the Lead content of its Licorice Products. If a
11 Manufacturer Settling Defendant has test results demonstrating that all of its Licorice Products
12 have a consistent Lead content of less than 13 ppb, it shall provide such documentation to CEH
13 and the parties shall meet and confer and if CEH and the Manufacturer Settling Defendant agree
14 that all of the Manufacturer Settling Defendant's Licorice Products have a consistent Lead content
15 of less than 13 ppb, that Manufacturer Settling Defendant need not submit any subsequent annual
16 report to CEH regarding further reduction of Lead content of its Licorice Products. If the Parties
17 fail to agree, the Manufacturer Settling Defendant may seek relief from the Court upon a showing
18 consistent with this Section.

19 **3. ENFORCEMENT**

20 3.1 **General Enforcement Provisions.** CEH may, by motion or application for
21 an order to show cause before this Court, enforce the terms and conditions contained in this
22 Consent Judgment. Any action to enforce alleged violations of Section 2.3 by a Settling
23 Defendant shall be brought exclusively pursuant to this Section 3, and as applicable be subject to
24 the meet and confer requirement of Section 3.2.4.

25 3.2 **Enforcement of Reformulation Commitment.**

26 3.2.1 **Notice of Violation.** In the event that, at any time following the
27 relevant dates set out in Section 2.3, CEH identifies a Licorice Product manufactured, distributed,

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1 or sold by a Manufacturer Settling Defendant for which CEH has laboratory test results showing
2 that the Manufacturer Settling Defendant violated Section 2.3, CEH may issue a Notice of
3 Violation pursuant to this Section.

4 3.2.2 **Service of Notice of Violation and Supporting Documentation.**

5 3.2.2.1 Subject to Section 3.2.1, the Notice of Violation shall be sent
6 to the person(s) identified in Exhibit A to receive notices for the Manufacturer Settling Defendant,
7 and must be served within 45 days of the date the Licorice Products at issue were purchased or
8 otherwise acquired by CEH, provided, however, that CEH may have up to an additional 45 days to
9 send the Notice of Violation if, notwithstanding CEH's good faith efforts, the test data required by
10 Section 3.2.2.2 below cannot be obtained by CEH from its laboratory before expiration of the
11 initial 45 day period.

12 3.2.2.2 The Notice of Violation shall, at a minimum, set forth: (a)
13 the date the alleged violation was observed, (b) the location at which the Licorice Products were
14 offered for sale, (c) a description of the Licorice Products giving rise to the alleged violation,
15 including the name and address of the retail store where the sample was obtained and if available
16 information that identifies the product lot, such as the "best by" or "sell by" date, and (d) all test
17 data² obtained by CEH regarding the Licorice Products and supporting documentation sufficient
18 for validation of the test results, including any laboratory reports, quality assurance reports and
19 quality control reports associated with testing of the Licorice Products. Such Notice of Violation
20 shall be based upon the Test Protocol. Wipe, swipe, swab and X-ray fluorescence testing are not
21 sufficient to support a Notice of Violation. As an alternative, CEH may rely on testing conducted
22 and published by the California Department of Public Health ("CDPH") to support a Notice of
23 Violation, so long as CEH first obtains a full description of the Licorice Product tested, including
24 any information that is available from CDPH that would identify the product lot, such as a "best
25 by" or "sell by" date, and makes a good faith attempt to obtain information on the location at
26 which the Licorice Product was offered for sale, and the date the product was obtained by CDPH.

27 ² To support a Notice of Violation, CEH shall provide a minimum of two tests per Notice of Violation.

1 CEH shall share any such information with the Manufacturer Settling Defendant. Should CEH be
2 unable to obtain any such information, the Manufacturer Settling Defendant shall contact CDPH
3 and request such information and shall share such information with CEH upon receipt from
4 CDPH.

5 3.2.3 **Notice of Election of Response.** No more than 30 days after
6 service of a Notice of Violation, the Manufacturer Settling Defendant shall provide written notice
7 to CEH whether it elects to contest the allegations contained in a Notice of Violation (“Notice of
8 Election”). Failure to provide a Notice of Election within 30 days of service of a Notice of
9 Violation shall be deemed an election to contest the Notice of Violation.

10 3.2.3.1 If a Notice of Violation is contested, the Notice of Election
11 shall include all then-available documentary evidence regarding the alleged violation, including all
12 test data, if any. If the Manufacturer Settling Defendant or CEH later acquires additional test or
13 other data regarding the alleged violation, it shall notify the other party and promptly provide all
14 such data or information to the party. Any test data used to contest a Notice of Violation shall
15 meet the criteria of Section 3.2.2.2.

16 3.2.4 **Meet and Confer.** If a Notice of Violation is contested, CEH and
17 the Manufacturer Settling Defendant shall meet and confer to attempt to resolve their dispute.
18 Within 30 days of serving a Notice of Election contesting a Notice of Violation, and if no
19 enforcement action or application has been filed by CEH pursuant to Section 3.1, the
20 Manufacturer Settling Defendant may withdraw the original Notice of Election contesting the
21 violation and serve a new Notice of Election conceding the violation, provided however that the
22 Manufacturer Settling Defendant shall pay \$2,500 in addition to any payment required under this
23 Consent Judgment. At any time, CEH may withdraw a Notice of Violation, in which case for
24 purposes of this Section 3.2 the result shall be as if CEH never issued any such Notice of
25 Violation. If no informal resolution of a Notice of Violation results within 30 days of a Notice of
26 Election to contest, CEH may file an enforcement motion or application pursuant to Section 3.1.
27 In any such proceeding, CEH may seek whatever fines, costs, penalties, attorneys’ fees or other
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1 remedies are provided by law for failure to comply with the Consent Judgment.

2 3.2.5 **Non-Contested Matters.** If the Manufacturer Settling Defendant
3 elects not to contest the allegations in a Notice of Violation, it shall identify on a confidential basis
4 to CEH (by proper name, address of principal place of business and telephone number) the person
5 or entity that sold the Licorice Products to the Manufacturer Settling Defendant and the
6 manufacturer and other entities in the chain of distribution of the Licorice Product, provided that
7 such information is reasonably available. In addition, the Settling Defendant shall undertake
8 corrective action and make payments, if any, as set forth below.

9 3.2.5.1 If the test data provided by CEH in support of the Notice of
10 Violation reports a Lead content in a Licorice Product above the Reformulation Level but less than
11 70 ppb, then the Manufacturer Settling Defendant shall take the following corrective action and
12 make the following payments, if any:

13 (a) The Manufacturer Settling Defendant shall include in its Notice
14 of Election a detailed description with supporting documentation of the corrective action that it has
15 undertaken or proposes to undertake to address the alleged violation. Any such correction shall, at
16 a minimum, provide reasonable assurance that the Manufacturer Settling Defendant has stopped
17 selling or offering for sale in California all Licorice Products having the same lot number or lot
18 identifier, such as “best by” or “sell by” date, as that of the Licorice Products identified in CEH’s
19 Notice of Violation. The Manufacturer Settling Defendant shall make available to CEH for
20 inspection and/or copying records and correspondence regarding the corrective action. If there is a
21 dispute over the corrective action, the Manufacturer Settling Defendant and CEH shall meet and
22 confer pursuant to Section 3.2.4 before seeking any remedy in court. Provided, that in no case
23 shall Plaintiffs issue more than one NOV per manufacturing lot of Licorice Products.

24 (b) If the Notice of Violation is the first or second Notice of
25 Violation received by a Manufacturer Settling Defendant under Section 3.2.5.1 that was not
26 successfully contested or withdrawn, no payment shall be required by that Manufacturer Settling
27 Defendant. If the Notice of Violation is the third, fourth or fifth Notice of Violation received by a
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1 Manufacturer Settling Defendant under Section 3.2.5.1 that was not successfully contested or
2 withdrawn, that Manufacturer Settling Defendant shall pay \$2,500 for each Notice of Violation. If
3 a Manufacturer Settling Defendant has received more than five Notices of Violation under Section
4 3.2.5.1 that were not successfully contested or withdrawn, that Manufacturer Settling Defendant
5 shall pay \$5,000 for each subsequent Notice of Violation. If a Manufacturer Settling Defendant
6 produces with its Notice of Election Test Data from the manufacturer or supplier of the Licorice
7 Product that: (i) was conducted prior to the date CEH purchased the Licorice Product that is the
8 subject of the Notice of Violation; (ii) was conducted on Licorice Product that was from the same
9 manufacturing lot as the Licorice Product that is the subject of the Notice of Violation; and (iii)
10 demonstrates Lead levels below the Reformulation Level, then any payment under this Section
11 shall be decreased by fifty percent.

12 (c) Notwithstanding Section 3.2.5.1(b), if the Notice of Violation
13 was based on a Licorice Product that was sold outside of California, there shall be no payment
14 pursuant to this Section.

15 3.2.5.2 If the test data provided by CEH in support of the Notice of
16 Violation reports a Lead content in a Licorice Product of more than 70 ppb, then the Manufacturer
17 Settling Defendant shall take the following corrective action and make the following payments:

18 (a) The Manufacturer Settling Defendant shall include in its Notice
19 of Election a detailed description with supporting documentation of the corrective action that it has
20 undertaken or proposes to undertake to address the alleged violation. Any such correction shall, at
21 a minimum, provide reasonable assurance that the Manufacturer Settling Defendant has stopped
22 selling or offering for sale all Licorice Products having the same lot number or lot identifier, such
23 as “best by” or “sell by” date, as that of the Licorice Product identified in CEH’s Notice of
24 Violation (the “Noticed Licorice Products”), removed the Noticed Licorice Product from the
25 market and sent instructions to any of its stores and/or customers that offer the Noticed Licorice
26 Products for sale to cease offering the Noticed Licorice Products for sale and to either return all
27 Noticed Licorice Products to the Manufacturer Settling Defendant for destruction, or to directly

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1 destroy the Noticed Licorice Products. The Manufacturer Settling Defendant shall keep and make
2 available to CEH for inspection and copying records and correspondence regarding the market
3 withdrawal and destruction of the Noticed Licorice Products. If there is a dispute over the
4 corrective action, the Manufacturer Settling Defendant and CEH shall meet and confer before
5 seeking any remedy in court. In no case shall Plaintiff issue more than one NOV per
6 manufacturing lot of Licorice Product.

7 (b) If the Notice of Violation is the first Notice of Violation
8 received by a Manufacturer Settling Defendant under Section 3.2.5.2 that was not successfully
9 contested or withdrawn, no payment shall be required by that Manufacturer Settling Defendant. If
10 the Notice of Violation is the second, third or fourth Notice of Violation received by a
11 Manufacturer Settling Defendant under Section 3.2.5.2 that was not successfully contested or
12 withdrawn, that Manufacturer Settling Defendant shall pay \$8,000 for each Notice of Violation. If
13 a Manufacturer Settling Defendant has received more than four Notices of Violation under Section
14 3.2.5.2 that were not successfully contested or withdrawn, that Manufacturer Settling Defendant
15 shall pay \$12,000 for each Notice of Violation. If a Manufacturer Settling Defendant produces
16 with its Notice of Election Test Data from the manufacturer or supplier of the Licorice Product
17 that: (i) was conducted prior to the date CEH purchased the Licorice Product that is the subject of
18 the Notice of Violation; (ii) was conducted on Licorice Product that was from the same
19 manufacturing lot as the Licorice Product that is the subject of the Notice of Violation; and (iii)
20 demonstrates Lead levels below the Reformulation Level, then any payment under this Section
21 shall be decreased by fifty percent.

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

27 3.2.7 **Repeat Violations.** If a Manufacturer Settling Defendant has
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1 received four or more Notices of Violation that were not successfully contested or withdrawn in
2 any 12-month period then, at CEH's option, CEH may seek whatever fines, costs, penalties,
3 attorneys' fees or other remedies that are provided by law for failure to comply with the Consent
4 Judgment. Prior to seeking such relief, CEH shall meet and confer with the Manufacturer Settling
5 Defendant for at least 30 days to determine if the Manufacturer Settling Defendant and CEH can
6 agree on measures that the Manufacturer Settling Defendant can undertake to prevent future
7 violations.

8 **4. PAYMENTS**

9 4.1 **Payments by Settling Defendants.** Within five (5) days of the entry of this
10 Consent Judgment, payment shall be made in the amount provided for that Settling Defendant on
11 Exhibit A as further set forth in this Section.

12 4.2 **Allocation of Payments.** The total settlement amount for each Settling
13 Defendant shall be paid in three separate checks in the amounts specified on Exhibit A and
14 delivered to the offices of the Lexington Law Group (Attn: Eric S. Somers), 503 Divisadero
15 Street, San Francisco, California 94117. Any failure by a Settling Defendant to comply with the
16 payment terms herein shall be subject to a stipulated late fee in the amount of \$100 for each day
17 after the delivery date the payment is received. The late fees required under this Section shall be
18 recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought
19 pursuant to Section 3 of this Consent Judgment. The funds paid by each Settling Defendant shall
20 be allocated as set forth on Exhibit A for each Settling Defendant between the following
21 categories and made payable as follows:

22 4.2.1 A civil penalty pursuant to Health & Safety Code § 25249.7(b). CEH shall
23 apportion this payment in accordance with Health & Safety Code § 25249.12 (25% to CEH and
24 75% to the State of California's Office of Environmental Health Hazard Assessment).
25 Accordingly, the civil penalty payment check for the amount designated for each Settling
26 Defendant on Exhibit A as Civil Penalty shall be made payable to the "Center for Environmental
27 Health" and associated with taxpayer identification number 94-3251981.

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1 4.2.2 A payment in lieu of civil penalty to CEH pursuant to Health & Safety
2 Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH shall use such
3 funds to continue its work educating and protecting people from exposures to toxic chemicals,
4 including heavy metals. In addition, as part of its Community Environmental Action and Justice
5 Fund, CEH will use four percent of such funds to award grants to grassroots environmental justice
6 groups working to educate and protect people from exposures to toxic chemicals. The method of
7 selection of such groups can be found at the CEH web site at www.ceh.org/justicefund. The
8 payment pursuant to this Section shall be made payable to the Center For Environmental Health
9 and associated with taxpayer identification number 94-3251981.

10 4.2.3 A reimbursement of a portion of CEH’s reasonable attorneys’ fees
11 and costs. The attorneys’ fees and costs reimbursement check shall be made payable to the
12 Lexington Law Group and associated with taxpayer identification number 94-3317175.

13 **5. MODIFICATION AND DISPUTE RESOLUTION**

14 5.1 **Modification.** This Consent Judgment may be modified from time to time
15 by express written agreement of the Parties, with the approval of the Court, or by an order of this
16 Court upon motion and in accordance with law.

17 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent
18 Judgment shall attempt in good faith to meet and confer with all affected Parties prior to filing a
19 motion to modify the Consent Judgment.

20 **6. CLAIMS COVERED AND RELEASE**

21 6.1 This Consent Judgment is a full, final and binding resolution between CEH
22 on behalf of itself and the public interest and each Settling Defendant, and their parents,
23 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
24 shareholders and their successors and assigns, and attorneys (“Defendant Releasees”), and all
25 entities other than those listed in Exhibit B to which a Settling Defendant distributes or sells
26 Licorice Products, including but not limited to distributors, wholesalers, customers, retailers, re-
27 packagers, franchisees, licensors and licensees (“Downstream Releasees”), of any violation of
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1 Proposition 65 based on failure to warn about alleged exposure to Lead contained in Licorice
2 Products that were sold by a Settling Defendant prior to the Effective Date.

3 6.2 The release set forth in Section 6.1 shall also apply to Licorice Products
4 sold by a Retailer/Distributor Settling Defendant that were purchased prior to April 1, 2014 but
5 sold thereafter.

6 6.3 CEH, acting in the public interest, releases, waives, and forever discharges
7 any and all claims against each Settling Defendant, Defendant Releasees, and Downstream
8 Releasees arising from any violation of Proposition 65 that has been or could have been asserted
9 regarding the failure to warn about exposure to Lead arising in connection with Licorice Products
10 manufactured, distributed or sold by a Settling Defendant prior to the Effective Date.

11 6.4 CEH, for itself only, releases, waives, and forever discharges any and all
12 claims against each Settling Defendant, Defendant Releasees, and Downstream Releasees arising
13 from any violation of Proposition 65 or any other statutory or common law claim that has been or
14 could have been asserted regarding the failure to warn about exposure to Lead arising in
15 connection with Licorice Products manufactured, distributed or sold by a Settling Defendant prior
16 to the Effective Date.

17 6.5 Compliance with the terms of this Consent Judgment by a Manufacturer
18 Settling Defendant and that Settling Defendant's Defendant Releasees shall constitute compliance
19 with Proposition 65 by such Settling Defendant, that Settling Defendant's Defendant Releasees
20 and that Settling Defendant's Downstream Releasees with respect to any alleged failure to warn
21 about Lead in Licorice Products manufactured, distributed or sold by that Settling Defendant after
22 the Effective Date.

23 6.6 Nothing in this Consent Judgment affects CEH's right to commence or
24 prosecute an action under Proposition 65 against any person other than a Settling Defendant,
25 Defendant Releasees, or Downstream Releasees. Nothing in this Consent Judgment affects CEH's
26 right to commence or prosecute an action under Proposition 65 against a Settling Defendant
27 related to exposure to Lead from Licorice Products that do not meet the Reformulation Levels
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1 after the dates set out in Section 2.3.

2 **7. PROVISION OF NOTICE**

3 7.1 When CEH is entitled to receive any notice under this Consent Judgment,
4 the notice shall be sent by first class and electronic mail to:

5 Eric S. Somers
6 Lexington Law Group
7 503 Divisadero Street
8 San Francisco, CA 94117
9 esomers@lexlawgroup.com

10 7.2 When a Settling Defendant is entitled to receive any notice under this
11 Consent Judgment, the notice shall be sent by first class and electronic mail to the person(s)
12 identified in Exhibit A for each such Settling Defendant.

13 7.3 Any Party may modify the person and address to whom the notice is to be
14 sent by sending the other Party notice by first class and electronic mail.

15 **8. COURT APPROVAL**

16 8.1 This Consent Judgment shall become effective on the Effective Date. CEH
17 shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendants
18 shall support approval of such Motion.

19 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force
20 or effect and shall not be introduced into evidence or otherwise used in any proceeding for any
21 purpose, other than to allow the Court to determine if there was a material breach of Section 8.1.

22 **9. GOVERNING LAW AND CONSTRUCTION**

23 9.1 The terms of this Consent Judgment shall be governed by the laws of the
24 State of California.

25 **10. ATTORNEYS' FEES**

26 10.1 A Party who unsuccessfully brings or contests an action arising out of this
27 Consent Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and
28 costs unless the unsuccessful Party has acted with substantial justification. For purposes of this
Consent Judgment, the term substantial justification shall carry the same meaning as used in the

1 Civil Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

2 10.2 Notwithstanding Section 10.1, a Party who prevails in a contested
3 enforcement action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to
4 Code of Civil Procedure §1021.5 against a Party that acted with substantial justification. The
5 Party seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and
6 this provision shall not be construed as altering any procedural or substantive requirements for
7 obtaining such an award.

8 10.3 Nothing in this Section 10 shall preclude a party from seeking an award of
9 sanctions pursuant to law.

10 **11. ENTIRE AGREEMENT**

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

25 **12. RETENTION OF JURISDICTION**

26 12.1 This Court shall retain jurisdiction of this matter to implement or modify
27 the Consent Judgment.

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13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

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

14. NO EFFECT ON OTHER SETTLEMENTS

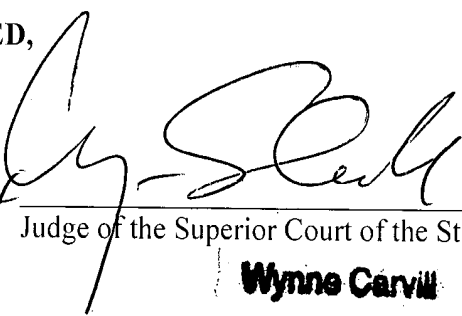
14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim against an entity that is not a Settling Defendant on terms that are different than those contained in this Consent Judgment.

15. EXECUTION IN COUNTERPARTS

15.1 The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile or portable document format (pdf), which taken together shall be deemed to constitute one document.

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

Dated:

10/29/2014 

Judge of the Superior Court of the State of California


Wynne Carvill

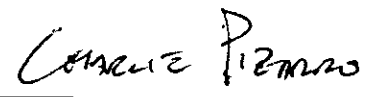
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IT IS SO STIPULATED:

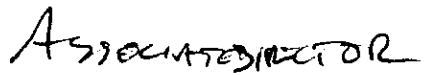
Dated: July 21, 2014

CENTER FOR ENVIRONMENTAL HEALTH





Printed Name



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Dated: 7/25, 2014

JELLY BELLY CANDY COMPANY

By: John DiGiusto

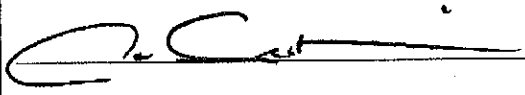
John DiGiusto

Printed Name

General Counsel

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Dated: <u>8/13</u> , 2014	SWEET CANDY, LLC
	

	<u>John S Kim</u>
	Printed Name
	<u>CEO</u>
	Title

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Dated: August 8, 2014

DALLO & CO., INC.

M J Doll

MIKE DOLLO
Printed Name

PRESIDENT
Title

EXHIBIT A
Settling Defendants

Settling Defendant: Jelly Belly Candy Company

1. Type of Defendant:

Manufacturer Defendant

2. Defendant's Settlement Payment and Allocation:

Total Settlement Payment	\$ 70,000
Civil Penalty	\$ 9,250
Payment in Lieu of Civil Penalty	\$ 13,900
Attorneys' Fees and Costs	\$ 46,850

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

John E. Di Giusto
General Counsel
Jelly Belly Candy Company
One Jelly Belly Lane
Fairfield, CA 94533-6741
jdigiusto@jellybelly.com

Robert D. Swanson
Boutin Jones Inc.
555 Capitol Mall, Suite 1500
Sacramento, CA 95814
rswanson@boutinjones.com

James T. Dufour
Dufour Law Group
819 F Street
Sacramento, CA 95814
dufourlawgroup@sbcglobal.net

4. Date of Service of 60-day Notice of Violation under Proposition 65:

February 3, 2014

EXHIBIT A
Settling Defendants

Settling Defendant: Sweet Candy, LLC

1. Type of Defendant:

Retailer/Distributor Settling Defendants

2. Defendant's Settlement Payment and Allocation:

Total Settlement Payment	\$ 17,500
Civil Penalty	\$ 2,270
Payment in Lieu of Civil Penalty	\$ 3,400
Attorneys' Fees and Costs	\$ 11,830

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

Joe R. Abramson
Law Offices of Joe. R. Abramson
21700 Oxnard Street
Suite 1770
Woodland Hills, CA 91367
jralaw1@pacbell.net

EXHIBIT A
Settling Defendants

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Settling Defendant: Dallo & Co., Inc.

4. Type of Defendant:
Retailer/Distributor Settling Defendants

5. Defendant’s Settlement Payment and Allocation:

Total Settlement Payment	\$ 9,300
Civil Penalty	\$ 1,150
Payment in Lieu of Civil Penalty	\$ 1,700
Attorneys’ Fees and Costs	\$ 6,450

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

Michael Dallo
Dallo Law Group
406 Ninth Ave., Ste 212
San Diego, CA 92101
mdallo@dallolawgroup.com

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EXHIBIT B
LIST OF ENTITIES NOT SUBJECT
TO DOWNSTREAM RELEASE

- Amazon.com, Inc.
- Aria Candy LLC
- Buisson, Inc.
- Cloetta A.B.
- Cloetta Holland B.V.
- CVS Pharmacy, Inc.
- Ercus Group
- Gerrit J. Verburg Co.
- Grupo Ercus, S.A. de C.V.
- In-Store Distributors, Inc.
- John Sommer, Inc.
- King Regal, SA
- Kookaburra Licorice Co.
- New Zealand Natural Goods, Inc.
- Tangerine Confectionery Ltd.
- The Hershey Company