

ENDORSED
FILED
ALAMEDA COUNTY

APR 15 2016

CLERK OF THE SUPERIOR COURT

By **SIANTE DEWBERRY**

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

CENTER FOR ENVIRONMENTAL HEALTH,)

Plaintiff,)

v.)

THE HERSHEY COMPANY, *et al.*,)

Defendants.)

Case No. RG-14733545

~~PROPOSED~~ CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 1.1 The Parties to this Consent Judgment are the Center For Environmental Health, a
3 California non-profit corporation (“CEH”), and The Hershey Company (“Hershey” or “Settling
4 Defendant”). Plaintiff and Settling Defendant are together defined as the “Parties.” The Parties
5 enter into this Consent Judgment to settle certain claims asserted by CEH against Settling
6 Defendant as set forth in the operative complaint (the “Complaint”) in the above-captioned matter.
7 This Consent Judgment covers confectionery licorice products (“Licorice Products”) sold or
8 offered for sale by Settling Defendant.

9 1.2 On April 1, 2014, CEH served a 60-day Notice of Violation under Proposition 65,
10 alleging that Settling Defendant violated Proposition 65 by exposing persons to lead and lead
11 compounds (“Lead”) contained in Licorice Products without first providing a clear and reasonable
12 Proposition 65 warning.

13 1.3 Settling Defendant is a corporation that manufactures, distributes, sells or offers for
14 sale Licorice Products that are sold in the State of California.

15 1.4 On July 18, 2014, CEH filed the Complaint in this matter. On November 25,
16 2014, CEH filed the operative Second Amended Complaint (the “Complaint”) in this matter,
17 adding Settling Defendant as a named defendant.

18 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
20 over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in the County
21 of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
22 resolution of all claims which were or could have been raised in the Complaint based on the facts
23 alleged therein with respect to Licorice Products manufactured, distributed, and/or sold by Settling
24 Defendant.

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

6 **2. INJUNCTIVE RELIEF**

7 2.1 **Reformulation Level.** The Reformulation Level for Licorice Products is 35 parts
8 per billion (“ppb”) or less of Lead by weight. Such concentrations shall be determined by the test
9 protocol attached hereto as Exhibit B (“Test Protocol”).

10 2.2 **Reformulation of Licorice Products:** After December 31, 2015, Hershey shall
11 not manufacture or purchase any Licorice Products that do not meet the Reformulation Level.
12 After May 31, 2016, Hershey shall not ship, offer for sale or sell any Licorice Products that do not
13 meet the Reformulation Level.

14 **3. ENFORCEMENT**

15 3.1 **General Enforcement Provisions.** CEH may, by motion or application for an
16 order to show cause before this Court, enforce the terms and conditions contained in this Consent
17 Judgment. Any action to enforce alleged violations of Section 2.3 by Hershey shall be brought
18 exclusively pursuant to this Section 3 based on Licorice Products purchased in California and as
19 applicable be subject to the meet and confer requirement of Section 3.2.4.

20 3.2 **Enforcement of Reformulation Commitment.**

21 3.2.1 **Notice of Violation.** In the event that, at any time following the relevant
22 dates set out in Section 2.3, CEH identifies a Licorice Product manufactured, distributed, or sold
23 by Hershey for which CEH has laboratory test results developed based on the Test Protocol
24 showing that Hershey violated Section 2.3, CEH may issue a Notice of Violation pursuant to this
25 Section.

1 **3.2.2 Service of Notice of Violation and Supporting Documentation.**

2 3.2.2.1 Subject to Section 3.2.1, the Notice of Violation shall be sent to the
3 person(s) identified in Exhibit A to receive notices for Hershey, and must be served within 45 days
4 of the date the Licorice Products at issue were purchased or otherwise acquired by CEH, provided,
5 however, that CEH may have up to an additional 45 days to send the Notice of Violation if,
6 notwithstanding CEH’s good faith efforts, the test data required by Section 3.2.2.2 below cannot
7 be obtained by CEH from its laboratory before expiration of the initial 45 day period.

8 3.2.2.2 The Notice of Violation shall, at a minimum, set forth: (a) the date
9 the alleged violation was observed, (b) the locations at which the Licorice Products were offered
10 for sale, (c) a description of the Licorice Products giving rise to the alleged violation, including the
11 name and address of the retail stores where the samples were obtained and if available information
12 that identifies the product lot, such as the “best by” or “sell by” date, and (d) all test data obtained
13 by CEH regarding the Licorice Products and supporting documentation sufficient for validation of
14 the test results, including any laboratory reports, quality assurance reports and quality control
15 reports associated with testing of the Licorice Products. Such Notice of Violation shall be based
16 upon the Test Protocol. Wipe, swipec, swab and X-ray fluorescence testing are not sufficient to
17 support a Notice of Violation. In no case shall CEH issue more than one NOV per type of
18 Licorice Product per quarter.

19 **3.2.3 Notice of Election of Response.** No more than 30 days after service of a
20 Notice of Violation, Hershey shall provide written notice to CEH whether it elects to contest the
21 allegations contained in a Notice of Violation (“Notice of Election”). Failure to provide a Notice
22 of Election within 30 days of service of a Notice of Violation shall be deemed an election to
23 contest the Notice of Violation.

24 3.2.3.1 If a Notice of Violation is contested, the Notice of Election shall
25 include Lead test data from Hershey concerning the Licorice Product that is the subject of CEH’s
26 testing giving rise to the Notice of Violation. Any test data used by the Hershey to contest a
27 Notice of Violation shall be based on the Test Protocol.

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1 3.2.4 **Meet and Confer.** If a Notice of Violation is contested, CEH and Hershey
2 shall meet and confer to attempt to resolve their dispute. Within 30 days of serving a Notice of
3 Election contesting a Notice of Violation, and if no enforcement action or application has been
4 filed by CEH pursuant to Section 3.1, Hershey may withdraw the original Notice of Election
5 contesting the violation and serve a new Notice of Election conceding the violation, provided
6 however that Hershey shall pay \$2,500 in addition to any payment required under this Consent
7 Judgment. At any time, CEH may withdraw a Notice of Violation, in which case for purposes of
8 this Section 3.2 the result shall be as if CEH never issued any such Notice of Violation. If no
9 informal resolution of a Notice of Violation results within 30 days of a Notice of Election to
10 contest, CEH may file an enforcement motion or application pursuant to Section 3.1. In any such
11 proceeding, CEH may seek whatever fines, costs, penalties, attorneys' fees or other remedies are
12 provided by law for failure to comply with the Consent Judgment.

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

20 3.2.5.1 If the test data provided by CEH in support of the Notice of
21 Violation reports a Lead content in a Licorice Product above the Reformulation Level but less than
22 70 ppb, then Hershey shall take the following corrective action and make the following payments,
23 if any:

24 (a) Hershey shall include in its Notice of Election a detailed
25 description with supporting documentation of the corrective action that it has undertaken or
26 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,
27 provide reasonable assurance that Hershey has stopped selling or offering for sale in California all
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1 Licorice Products having the same lot number or lot identifier, such as “best by” or “sell by” date,
2 as that of the Licorice Products identified in CEH’s Notice of Violation. Hershey shall make
3 available to CEH for inspection and/or copying records and correspondence sufficient to verify the
4 corrective action. If there is a dispute over the corrective action, Hershey and CEH shall meet and
5 confer pursuant to Section 3.2.4 before seeking any remedy in court.

6 (b) If the Notice of Violation is the first or second Notice of
7 Violation received by Hershey under Section 3.2.5.1 that was not successfully contested or
8 withdrawn, no payment shall be required by Hershey. If the Notice of Violation is the third,
9 fourth or fifth Notice of Violation received by Hershey under Section 3.2.5.1 that was not
10 successfully contested or withdrawn, Hershey shall pay \$2,500 for each Notice of Violation. If
11 Hershey has received more than five Notices of Violation under Section 3.2.5.1 that were not
12 successfully contested or withdrawn, Hershey shall pay \$5,000 for each subsequent Notice of
13 Violation. If Hershey produces with its Notice of Election test data based on the Test Protocol
14 from the manufacturer or supplier of the Licorice Product that: (i) was conducted prior to the date
15 CEH purchased the Licorice Product that is the subject of the Notice of Violation; (ii) was
16 conducted on Licorice Product that was manufactured and packaged within two weeks of the date
17 that the Licorice Product that is the subject of the Notice of Violation was manufactured; and (iii)
18 demonstrates Lead levels below the Reformulation Level, then any payment under this Section
19 shall be decreased by fifty percent.

20 3.2.5.2 If the test data provided by CEH in support of the Notice of
21 Violation reports a Lead content in a Licorice Product of more than 70 ppb, then Hershey shall
22 take the following corrective action and make the following payments:

23 (a) Hershey shall include in its Notice of Election a detailed
24 description with supporting documentation of the corrective action that it has undertaken or
25 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,
26 provide reasonable assurance that Hershey has stopped selling or offering for sale all Licorice
27 Products having the same lot number or lot identifier, such as “best by” or “sell by” date, as that of
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1 the Licorice Product identified in CEH's Notice of Violation (the "Noticed Licorice Products")
2 and sent instructions to any of its customers that offer the Noticed Licorice Products for sale to
3 cease offering the Noticed Licorice Products for sale in California and to either return all such
4 Noticed Licorice Products to Hershey for destruction, or to directly destroy the Noticed Licorice
5 Products. Hershey shall keep and make available to CEH for inspection and copying records and
6 correspondence sufficient to verify the market withdrawal and destruction of the Noticed Licorice
7 Products. If there is a dispute over the corrective action, Hershey and CEH shall meet and confer
8 before seeking any remedy in court.

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

22 **3.2.6 Payments.** Any payments under Section 3.2 shall be made by check
23 payable to the "Lexington Law Group" and shall be paid within 30 days of service of a Notice of
24 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 Hershey has received four or more Notices of
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1 Violation that were not successfully contested or withdrawn in any 12-month period then, at
2 CEH's option, CEH may seek whatever fines, costs, penalties, attorneys' fees or other remedies
3 that are provided by law for failure to comply with the Consent Judgment. Prior to seeking such
4 relief, CEH shall meet and confer with Hershey for at least 30 days to determine if Hershey and
5 CEH can agree on measures Hershey can undertake to 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, payment shall be made in the amount provided on Exhibit A as further set
9 forth in this Section.

10 **4.2 Allocation of Payments.** The total settlement amount for Settling Defendant shall
11 be paid in three separate checks in the amounts specified on Exhibit A and delivered to the offices
12 of the Lexington Law Group (Attn: Eric S. Somers), 503 Divisadero Street, San Francisco,
13 California 94117. Any failure by Settling Defendant to comply with the payment terms herein
14 shall be subject to a stipulated late fee in the amount of \$100 for each day after the delivery date
15 the payment is received. The late fees required under this Section shall be recoverable, together
16 with reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 3 of
17 this Consent Judgment. The funds paid by Settling Defendant shall be allocated as set forth on
18 Exhibit A for Settling Defendant between the following categories and made payable as follows:

19 **4.2.1** A civil penalty pursuant to Health & Safety Code § 25249.7(b). CEH shall
20 apportion this payment in accordance with Health & Safety Code § 25249.12 (25% to CEH and
21 75% to the State of California's Office of Environmental Health Hazard Assessment).

22 Accordingly, the civil penalty payment check for the amount designated for Settling Defendant on
23 Exhibit A as Civil Penalty shall be made payable to the "Center for Environmental Health" and
24 associated with taxpayer identification number 94-3251981.

25 **4.2.2** A payment in lieu of civil penalty to CEH pursuant to Health & Safety
26 Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH shall use such
27 funds to continue its work educating and protecting people from exposures to toxic chemicals,
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1 including heavy metals. In addition, as part of its Community Environmental Action and Justice
2 Fund, CEH will use four percent of such funds to award grants to grassroots environmental justice
3 groups working to educate and protect people from exposures to toxic chemicals. The method of
4 selection of such groups can be found at the CEH web site at www.ceh.org/justicefund. The
5 payment pursuant to this Section shall be made payable to the "Center For Environmental Health"
6 and associated with taxpayer identification number 94-3251981.

7 4.2.3 A reimbursement of a portion of CEH's reasonable attorneys' fees and
8 costs. The attorneys' fees and costs reimbursement check shall be made payable to the "Lexington
9 Law Group" and associated with taxpayer identification number 94-3317175.

10 5. MODIFICATION AND DISPUTE RESOLUTION

11 5.1 **Modification.** This Consent Judgment may be modified from time to time by
12 express written agreement of the Parties, with the approval of the Court, or by an order of this
13 Court upon motion and in accordance with law.

14 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
15 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
16 modify the Consent Judgment.

17 6. CLAIMS COVERED AND RELEASE

18 6.1 This Consent Judgment is a full, final and binding resolution between CEH on
19 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,
20 affiliated entities that are under common ownership, directors, officers, employees, shareholders
21 and their successors and assigns, and attorneys ("Defendant Releasees"), and all entities to which a
22 Settling Defendant distributes or sells Licorice Products, including but not limited to distributors,
23 wholesalers, customers, retailers, re-packagers, franchisees, licensors and licensees ("Downstream
24 Releasees"), of any violation of Proposition 65 based on failure to warn about alleged exposure to
25 Lead contained in Licorice Products that were manufactured, shipped or sold by or for Settling
26 Defendant prior to the dates set forth in Section 2.3.

27 6.2 CEH, acting in the public interest, releases, waives, and forever discharges any and
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1 all claims against Settling Defendant, Defendant Releasees, and Downstream Releasees arising
2 from any violation of Proposition 65 that has been or could have been asserted regarding the
3 failure to warn about exposure to Lead arising in connection with Licorice Products manufactured,
4 or sold by Settling Defendant prior to the dates set forth in Section 2.3.

5 6.3 CEH, for itself only, releases, waives, and forever discharges any and all claims
6 against Settling Defendant, Defendant Releasees, and Downstream Releasees arising from any
7 violation of Proposition 65 or any other statutory or common law claim that has been or could
8 have been asserted regarding the failure to warn about exposure to Lead arising in connection with
9 Licorice Products manufactured or sold by Settling Defendant prior to the dates set forth in
10 Section 2.3.

11 6.4 Compliance with the terms of this Consent Judgment by Hershey and Defendant
12 Releasees shall constitute compliance with Proposition 65 by Hershey, Defendant Releasees and
13 Downstream Releasees with respect to any alleged failure to warn about Lead in Licorice Products
14 manufactured or sold after the dates set forth in Section 2.3.

15 6.5 Nothing in this Consent Judgment affects CEH's right to commence or prosecute
16 an action under Proposition 65 against any person other than Settling Defendant, Defendant
17 Releasees, or Downstream Releasees. Nothing in this Consent Judgment affects CEH's right to
18 commence or prosecute an action under Proposition 65 against a Downstream Releasee related to
19 exposure to Lead from Licorice Products sold by such Downstream Releasee that do not meet the
20 Reformulation Levels after the dates set out in Section 2.3.

21 7. PROVISION OF NOTICE

22 7.1 When CEH is entitled to receive any notice under this Consent Judgment, the
23 notice shall be sent by first class and electronic mail to:

24 Eric S. Somers
25 Lexington Law Group
26 503 Divisadero Street
27 San Francisco, CA 94117
28 esomers@lexlawgroup.com

7.2 When Settling Defendant is entitled to receive any notice under this Consent

1 Judgment, the notice shall be sent by first class and electronic mail to the person(s) identified in
2 Exhibit A.

3 7.3 Any Party may modify the person and address to whom the notice is to be sent by
4 sending the other Party notice by first class and electronic mail.

5 **8. COURT APPROVAL**

6 8.1 This Consent Judgment shall become effective on the Effective Date. CEH shall
7 prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall
8 support approval of such Motion.

9 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
10 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose,
11 other than to allow the Court to determine if there was a material breach of Section 8.1.

12 **9. GOVERNING LAW AND CONSTRUCTION**

13 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
14 California.

15 **10. ATTORNEYS' FEES**

16 10.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
17 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs
18 unless the unsuccessful Party has acted with substantial justification. For purposes of this Consent
19 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
20 Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

21 10.2 Notwithstanding Section 10.1, a Party who prevails in a contested enforcement
22 action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of
23 Civil Procedure §1021.5 against a Party that acted with substantial justification. The Party
24 seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and this
25 provision shall not be construed as altering any procedural or substantive requirements for
26 obtaining such an award.

27 10.3 Nothing in this Section 10 shall preclude a party from seeking an award of
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1 sanctions pursuant to law.

2 **11. ENTIRE AGREEMENT**

3 11.1 This Consent Judgment contains the sole and entire agreement and understanding
4 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
5 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
6 and therein. There are no warranties, representations, or other agreements between the Parties
7 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
8 other than those specifically referred to in this Consent Judgment have been made by any Party
9 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
10 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
11 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
12 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
13 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
14 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
15 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
16 whether or not similar, nor shall such waiver constitute a continuing waiver.

17 **12. RETENTION OF JURISDICTION**

18 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
19 Consent Judgment.

20 **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

21 13.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
22 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
23 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

24 **14. NO EFFECT ON OTHER SETTLEMENTS**

25 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
26 against an entity that is not Settling Defendant on terms that are different from those contained in
27 this Consent Judgment.

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1 **15. EXECUTION IN COUNTERPARTS**

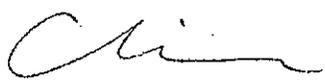
2 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by
3 means of facsimile or portable document format (pdf), which taken together shall be deemed to
4 constitute one document.

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

7 Dated:

8 _____
Judge of the Superior Court of the State of California

9 **IT IS SO STIPULATED:**

10 Dated: <u>1/4/2016</u> 11 12 13 14 15 16 17 18	CENTER FOR ENVIRONMENTAL HEALTH  _____ CHARLIE PIZMAS _____ Printed Name ASSOCIATE DIRECTOR _____ Title
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19 Dated: _____, 2015 20 21 22 23 24 25 26 27 28	THE HERSHEY COMPANY _____ _____ Printed Name _____ Title
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1 15. EXECUTION IN COUNTERPARTS

2 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by
3 means of facsimile or portable document format (pdf), which taken together shall be deemed to
4 constitute one document.

5 IT IS SO ORDERED, ADJUDGED,
6 AND DECREED

7 Dated:

8 APR 15 2016

Winifred Y. Smith
Judge of the Superior Court of the State of California

9 **WINIFRED Y. SMITH**

10 IT IS SO STIPULATED:

<p>11 Dated: _____, 2015</p>	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <hr/> <p>Printed Name</p> <hr/> <p>Title</p>
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<p>19 Dated: <u>Jan. 4</u>, 2016</p>	<p>20 THE HERSHEY COMPANY</p> <p>21 <i>Adrian D. Mebane</i></p> <p>22 <u>Adrian D. Mebane</u></p> <p>23 Printed Name</p> <p>24 <u>VP and Deputy General Counsel</u></p> <p>25 Title</p> <p>26</p> <p>27</p> <p>28</p>
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EXHIBIT A
Settling Defendant

Settling Defendant: The Hershey Company

1. Defendant's Settlement Payment and Allocation:

Total Settlement Payment	\$130,000
Civil Penalty	\$ 17,260
Payment in Lieu of Civil Penalty	\$ 25,900
Attorneys' Fees and Costs	\$ 86,840

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

General Counsel
The Hershey Company
Attn: Shayon T. Smith
Director of Litigation, Law Department
ssmith6@hersheys.com
100 Crystal A Drive
P.O. Box 810
Hershey, PA 17033

With a copy to:

Michèle B. Corash
mcorash@mofocom
Robert L. Falk
Rfalk@mofocom
Morrison & Foerster LLP
425 Market Street, 32nd Floor
San Francisco, CA 94105

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EXHIBIT B
TEST PROTOCOL

Lead concentrations in the Licorice Products subject to this Consent Judgment shall be determined by use of tests conducted under using ICP-MS equipment with a level of detection of at least 20 ppb that meets standard laboratory QA/QC requirements. The testing shall be conducted using one of the following methods: (1) the FDA sample preparation protocol discussed in the method entitled "Elemental Analysis Manual: Section 4.4 Inductively Coupled Plasma-Atomic Emission Spectrometric Determination of Elements in Food Using Microwave Assisted Digestion" or (2) a microwave- or heat-assisted acid digestion method employing high-purity reagents. In either event, the laboratory shall digest at least 0.5 grams of each sample taken from a properly homogenized random selection of a Licorice Product as further described below and shall analyze each such sample without further dilution. The testing shall be reported via a single test result developed based on a composited sample composed from the entire contents of at least three packages of the Licorice Product in question as purchased at three separate retail locations in California.