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ALAMEDA COUNTY

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CENTER FOR ENVIRONMENTAL HEALTH

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

CENTER FOR ENVIRONMENTAL  
HEALTH,

Plaintiff,

v.

COMPAÑIA CERVECERA DE PUERTO  
RICO, INC.; WAL-MART STORES, INC.;  
and DOES 1 through 100, inclusive,

Defendants.

Case No. RG-14730384

~~[PROPOSED]~~ CONSENT  
JUDGMENT AS TO DEFENDANT  
COMPAÑIA CERVECERA DE  
PUERTO RICO, INC.

1           **1. INTRODUCTION**

2           1.1     This Consent Judgment is entered into by the Center For Environmental Health  
3           ("CEH"), a California non-profit corporation, and Compañía Cervecera de Puerto Rico, Inc.  
4           ("Defendant") to settle certain claims asserted by CEH against Defendant as set forth in the  
5           operative complaint in the matter entitled *Center for Environmental Health v. Compañía Cervecera*  
6           *de Puerto Rico, Inc., et al.*, Alameda County Superior Court Case No. RG-14730384 (the "Action").  
7           CEH and Defendant are referred to collectively as the "Parties."

8           1.2.     On April 11, 2014, CEH served a 60-Day Notice of Violation (the "Notice") relating  
9           to the California Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") on  
10          Defendant, the California Attorney General, the District Attorneys of every County in the State of  
11          California, and the City Attorneys for every City in the State of California with a population greater  
12          than 750,000. The Notice alleges violations of Proposition 65 with respect to the presence of 4-  
13          methylimidazole ("4-MEI") in carbonated soft drinks containing caramel coloring manufactured,  
14          distributed, and/or sold by Defendant (hereinafter, "Covered Products").

15          1.3.     Defendant is a corporation that employs ten (10) or more persons, and that  
16          manufactures, distributes, and/or sells Covered Products in the State of California.

17          1.4.     For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
18          jurisdiction over the allegations of violations contained in CEH's Complaint and personal  
19          jurisdiction over Defendant as to the acts alleged in CEH's Complaint, that venue is proper in the  
20          County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a full and  
21          final resolution of all claims which were or could have been raised in the Complaint based on the  
22          facts alleged therein.

23          1.5.     CEH and Defendant enter into this Consent Judgment as a full and final settlement of  
24          all claims that were raised in the Complaint, or that could have been raised in the Complaint, arising  
25          out of the facts or conduct alleged therein. By execution of this Consent Judgment and agreeing to  
26          comply with its terms, the Parties do not admit any facts or conclusions of law including, but not  
27          limited to, any facts or conclusions of law suggesting or demonstrating any violations of Proposition  
28          65 or any other statutory, common law, or equitable requirements. Nothing in this Consent

1 Judgment is or shall be construed as an admission by the Parties of any fact, conclusion of law,  
2 issue of law, or violation of law, nor shall compliance with the Consent Judgment constitute or be  
3 construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of  
4 law. Defendant denies the material factual and legal allegations in CEH’s Complaint and expressly  
5 denies any wrong doing whatsoever. Nothing in this Consent Judgment shall prejudice, waive, or  
6 impair any right, remedy, argument, or defense the Parties may have in this or any other pending or  
7 future legal proceedings. This Consent Judgment is the product of negotiation and compromise and  
8 is accepted by the Parties solely for purposes of settling, compromising, and resolving issues  
9 disputed in this action.

10 **2. INJUNCTIVE RELIEF**

11 2.1 Defendant shall comply with the following requirements to eliminate exposures to 4-  
12 MEI arising from the consumption of the Covered Products:

13 2.1.1. **Reformulation of Covered Products.** As of the date of entry of this  
14 Consent Judgment (the “Effective Date”), Defendant shall not manufacture, distribute, sell, or offer  
15 for sale in California any Covered Product manufactured on or later than the Effective Date unless  
16 such Covered Product contains no more than 81 parts per billion (“ppb”) 4-MEI.

17 2.1.2. **Interim Compliance.** Any Covered Product that is manufactured before the  
18 Effective Date and distributed, sold, or offered for sale by Defendant in California after the  
19 Effective Date shall be accompanied by a Clear and Reasonable Warning on each retail unit that  
20 complies with Section 2.1.4.

21 2.1.3. **Warnings for Products in the Stream of Commerce.** In an effort to ensure  
22 that consumers receive clear and reasonable warnings in compliance with Proposition 65 for  
23 Covered Products that have not been reformulated pursuant to Section 2.1.1 or labeled in  
24 accordance with Section 2.1.2, within 30 days following the Effective Date, Defendant shall provide  
25 warning materials by certified mail to each of its California retailers or distributors to whom  
26 Defendant reasonably believes it sold Covered Products that contained or may have contained 4-  
27 MEI. Such warning materials shall include a reasonably sufficient number of stickers in order to  
28 permit the retailer or distributor to place a warning sticker on each retail unit of Covered Product

1 such customer has purchased from Defendant. The stickers shall contain the warning language set  
2 forth in Section 2.1.4. The warning materials shall also include a letter of instruction for the  
3 placement of the stickers on Covered Products, and a Notice and Acknowledgment postcard.

4           **2.1.4. Proposition 65 Warnings.** A Clear and Reasonable Warning under this  
5 Consent Judgment shall state:

6           WARNING: This product contains 4-methylimidazole (“4-MEI”), a chemical known  
7 to the State of California to cause cancer.

8 A Clear and Reasonable Warning shall not be preceded by, surrounded by, or include any additional  
9 words or phrases that contradict, obfuscate, or otherwise undermine the warning. The warning  
10 statement shall be prominently displayed on each retail unit of the Covered Product or the  
11 packaging of each retail unit of the Covered Product with such conspicuousness, as compared with  
12 other words, statements, or designs as to render it likely to be read and understood by an ordinary  
13 individual prior to sale. For internet, catalog, or any other sale where the consumer is not physically  
14 present and cannot see a warning displayed on the Covered Product or the packaging of the Covered  
15 Product prior to purchase or payment, the warning statement shall be displayed in such a manner  
16 that it is likely to be read and understood prior to the authorization of or actual payment.

17           **3. PENALTIES AND PAYMENT**

18           3.1     Within ten (10) days following the Effective Date, Defendant shall pay the total sum  
19 of \$65,000 as a settlement payment, which shall be allocated as set forth in Sections 3.1.1-3.1.3  
20 below. The payments required under Sections 3.1.1-3.1.3 shall be made in three separate checks, all  
21 of which shall be delivered to Mark Todzo at Lexington Law Group at the address set forth in  
22 Section 7.

23           3.1.1. \$8,600 shall constitute a penalty pursuant to Cal. Health & Safety Code §  
24 25249.7(b), such money to be apportioned by CEH in accordance with Cal. Health & Safety Code §  
25 25249.12. The payment required under this Section 3.1.1 shall be made payable to CEH.

26           3.1.2. \$12,900 shall constitute a payment in lieu of civil penalty pursuant to Cal.  
27 Health & Safety Code § 25249.7(b) and 11 C.C.R. § 3202(b). CEH will use such funds to continue  
28 its work of educating and protecting the public from exposures to toxic chemicals. CEH may also

1 use a portion of such funds to monitor compliance with this Consent Judgment and to purchase and  
2 test Defendant's products to confirm compliance. In addition, as part of its Community  
3 Environmental Action and Justice Fund, CEH will use four percent (4%) of such funds to award  
4 grants to grassroots environmental justice groups working to educate and protect the public from  
5 exposures to toxic chemicals. The method of selection of such groups can be found at the CEH  
6 website at [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The payment required under this Section 3.1.2 shall be made  
7 payable to CEH.

8 3.1.3. \$43,500 shall constitute reimbursement of CEH's reasonable attorneys' fees  
9 and costs. The payment required under this Section 3.1.3 shall be made payable to Lexington Law  
10 Group.

#### 11 4. ENFORCEMENT OF CONSENT JUDGMENT

12 4.1. CEH may, by motion or application for an order to show cause before the Superior  
13 Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment.  
14 Prior to bringing any motion or application to enforce the requirements of Section 2 above, CEH  
15 shall provide Defendant with a Notice of Violation and a copy of any test results which purportedly  
16 support CEH's Notice of Violation. The Parties shall then meet and confer regarding the basis for  
17 CEH's anticipated motion or application in an attempt to resolve it informally, including providing  
18 Defendant a reasonable opportunity of at least thirty (30) days to cure any alleged violation. Should  
19 such attempts at informal resolution fail, CEH may file an enforcement motion or application. The  
20 prevailing party on any motion to enforce this Consent Judgment shall be entitled to its reasonable  
21 attorney's fees and costs incurred as a result of such motion or application. This Consent Judgment  
22 may only be enforced by the Parties.

#### 23 5. MODIFICATION OF CONSENT JUDGMENT

24 5.1. This Consent Judgment may only be modified by written agreement of CEH and  
25 Defendant, or upon motion of CEH or Defendant as provided by law.

#### 26 6. CLAIMS COVERED AND RELEASE

27 6.1. This Consent Judgment is a full, final, and binding resolution between CEH  
28 acting in the public interest and Defendant and Defendant's parents, officers, directors,

1 shareholders, divisions, subdivisions, subsidiaries, and their respective successors and assigns  
2 (“Defendant Releasees”), and all entities to whom they directly or indirectly distribute or sell or  
3 have distributed or sold Covered Products, including but not limited to distributors, wholesalers,  
4 customers, retailers, including but not limited to Wal-Mart Stores, Inc. and its affiliates and  
5 subsidiaries, franchisees, cooperative members, licensors, and licensees (“Downstream Defendant  
6 Releasees”), of all claims that were or could have been alleged in the Complaint in this Action  
7 arising from any violation of Proposition 65 that have been or could have been asserted in the public  
8 interest against Defendant and Downstream Defendant Releasees, regarding the failure to warn  
9 about exposure to 4-MEI in the Covered Products manufactured, distributed, or sold by Defendant  
10 prior to the Effective Date.

11           6.2. CEH, for itself releases, waives, and forever discharges any and all claims  
12 alleged in the Complaint against Defendant and Downstream Defendant Releasees arising from any  
13 violation of Proposition 65 that have been or could have been asserted regarding the failure to warn  
14 about exposure to 4-MEI in connection with Covered Products manufactured, distributed, or sold by  
15 Defendant prior to the Effective Date.

16           6.3. Compliance with the terms of this Consent Judgment by Defendant and the  
17 Downstream Defendant Releasees shall constitute compliance with Proposition 65 by Defendant  
18 and Downstream Defendant Releasees with respect to any alleged failure to warn about 4-MEI in  
19 Covered Products manufactured, distributed, or sold by Defendant after the Effective Date.

## 20           7. PROVISION OF NOTICE

21           7.1. When any Party is entitled to receive any notice under this Consent Judgment, the  
22 notice shall be sent by first class and electronic mail as follows:

23                   7.1.1. **Notices to Defendant.** The persons for Defendant to receive notices  
24 pursuant to this Consent Judgment shall be:

25                                   Wendy L. Feng  
26                                   Covington & Burling LLP  
27                                   One Front Street  
28                                   San Francisco, CA 94111  
                                      wfeng@cov.com

1 Gerardo J. Rivera Fourquet, Esq.  
2 Maymí Rivera LLC  
3 #33 Resolución Street  
4 Doral Bank Plaza  
5 3rd Floor  
6 San Juan, Puerto Rico 00920  
7 rivera@maymirivera.com

8 7.1.2. **Notices to Plaintiff.** The person(s) for CEH to receive notices pursuant to  
9 this Consent Judgment shall be:

10 Mark Todzo  
11 Lexington Law Group  
12 503 Divisadero Street  
13 San Francisco, CA 94117  
14 mtodzo@lexlawgroup.com

15 7.2. Any Party may modify the person and address to whom the notice is to be sent by  
16 sending the other Parties notice by both first class and electronic mail.

17 **8. COURT APPROVAL**

18 8.1. This Consent Judgment shall become effective on the Effective Date, provided  
19 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and  
20 Defendant shall support approval of such Motion.

21 8.2. If this Consent Judgment is not entered by the Court, it shall be of no force or effect  
22 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

23 **9. GOVERNING LAW AND CONSTRUCTION**

24 9.1. The terms and obligations arising from this Consent Judgment shall be construed and  
25 enforced in accordance with the laws of the State of California.

26 **10. ENTIRE AGREEMENT**

27 10.1. This Consent Judgment contains the sole and entire agreement and understanding of  
28 CEH and Defendant with respect to the entire subject matter hereof, and any and all prior  
discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
merged herein.

1           10.2. There are no warranties, representations, or other agreements between CEH and  
2 Defendant except as expressly set forth herein. No representations, oral or otherwise, express or  
3 implied, other than those specifically referred to in this Consent Judgment have been made by any  
4 Party hereto.

5           10.3. No other agreements not specifically contained or referenced herein, oral or  
6 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements  
7 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind  
8 any of the Parties hereto only to the extent that they are expressly incorporated herein.

9           10.4. No supplementation, modification, waiver, or termination of this Consent Judgment  
10 shall be binding unless executed in writing by the Party to be bound thereby.

11           10.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or  
12 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such  
13 waiver constitute a continuing waiver.

14           **11. RETENTION OF JURISDICTION**

15           11.1. This Court shall retain jurisdiction of this matter to implement or modify the Consent  
16 Judgment.

17           **12. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

18           12.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized  
19 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute  
20 the Consent Judgment on behalf of the Party represented and to legally bind that Party.

21           **13. NO EFFECT ON OTHER SETTLEMENTS**

22           13.1. Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
23 against another entity on terms that are different from those contained in this Consent Judgment.

24           **14. EXECUTION IN COUNTERPARTS**

25           14.1. The stipulations to this Consent Judgment may be executed in counterparts and by  
26 means of facsimile, which taken together shall be deemed to constitute one document.

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1 **IT IS SO STIPULATED:**

2 Dated: Dec 9, 2014

CENTER FOR ENVIRONMENTAL HEALTH

*[Signature]*

CHARLIE PIZARRO

Printed Name

ASSOCIATE DIRECTOR

Title

11 Dated: \_\_\_\_\_, 2014

COMPANIA CERVECERA DE PUERTO RICO, INC.

15 Printed Name

17 Title

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

20 APR - 9 2015  
21 Dated: GEORGE C. HERNANDEZ, JR., 2014

GEORGE C. HERNANDEZ, JR.

Judge of the Superior Court of the State of  
California, County of Alameda

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IT IS SO STIPULATED:

Dated: \_\_\_\_\_, 2014      CENTER FOR ENVIRONMENTAL HEALTH

\_\_\_\_\_

Printed Name

Title

Dated: November 20, 2014      COMPAÑIA CERVECERA DE PUERTO RICO, INC.

Carmen A. Valdés

CARMEN A. VALDÉS  
Printed Name

President  
Title

IT IS SO ORDERED, ADJUDGED,  
AND DECREED:

GEORGE C. HERNANDEZ, JR.

Dated: APR - 9 2015 ~~2014~~  
Judge of the Superior Court of the State of  
California, County of Alameda