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**ENDORSED
FILED
ALAMEDA COUNTY**
SEP 09 2015

Exec. Off./Clerk
By **M. VALINO**

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

CENTER FOR ENVIRONMENTAL HEALTH,)	Case No. RG 14-733545
)	
Plaintiff,)	[PROPOSED] CONSENT JUDGMENT
)	AS TO FIRST INDO-AMERICAN
v.)	CORP.
)	
KOOKABURRA LICORICE COMPANY, <i>et</i>)	
<i>al.</i> ,)	
)	
Defendants.)	

1. INTRODUCTION

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

1 Defendant.

2 1.2 On August 8, 2014, CEH served a 60-day Notice of Violation under Proposition 65
3 to Settling Defendant, the California Attorney General, the District Attorneys of every County in
4 the State of California, and the City Attorneys for every City in the State of California with a
5 population greater than 750,000. The Notices alleges that Settling Defendant violated Proposition
6 65 by exposing persons to lead and lead compounds (“Lead”) contained in Licorice Products
7 without first providing a clear and reasonable Proposition 65 warning.

8 1.3 Settling Defendant is a corporation that distributes, sells or offers for sale Licorice
9 Products in the State of California or has done so in the past.

10 1.4 On July 18, 2014, CEH filed the original Complaint in this matter. On November
11 25, 2014, CEH filed the operative Second Amended Complaint in this matter, naming Settling
12 Defendant as a defendant.

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

20 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the
21 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with
22 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.

28

1 **2. INJUNCTIVE RELIEF**

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

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

20 2.3 **Reformulation of Licorice Products:** After the Effective Date, Settling
21 Defendant shall not manufacture, purchase, ship, offer for sale, or sell any Licorice Products that
22 do not either meet the Reformulation Level or comply with the warning provision of Section 2.4.

23 2.4 **Warning Option.** In order to minimize any over-warning by limiting the use of
24 Proposition 65 warnings to products that do not meet the Reformulation Level, Settling Defendant
25 may manufacture, purchase, ship, offer for sale, or sell Licorice Products that do not meet the

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

1 Reformulation Level with a Clear and Reasonable Warning that complies with the provisions of
2 Section 2.4.1 only if Settling Defendant has in its possession a test result demonstrating that a
3 particular Licorice Product identified by its stock keeping unit (“SKU”) does not meet the
4 Reformulation Level that is dated within four (4) years of the date Settling Defendant sells the
5 Licorice Product.

6 2.4.1 **Proposition 65 Warnings.** A Clear and Reasonable Warning under this
7 Consent Judgment shall state:

8 **WARNING:** This product contains lead, a chemical known to the State of
9 California to cause cancer and birth defects or other reproductive harm.

10 This statement shall be prominently displayed on the Licorice Product packaging with such
11 conspicuousness, as compared with other words, statements or designs as to render it likely to be
12 read and understood by an ordinary individual prior to sale. For internet, catalog or any other sale
13 where the consumer is not physically present, the warning statement shall be displayed in such a
14 manner that it is likely to be read and understood by an ordinary individual prior to the
15 authorization of or actual payment. For internet sales, the warning statement shall be displayed
16 before a consumer commits to purchasing the Licorice Product and without the need for the
17 consumer to follow any additional hyperlinks beyond those required as part of the ordinary
18 purchasing process.

19 **3. ENFORCEMENT**

20 3.1 **Enforcement Procedures.** Prior to bringing any motion or order to show cause to
21 enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the violating
22 party thirty (30) days advanced written notice of the alleged violation. The Parties shall meet and
23 confer during such thirty (30) day period in an effort to try to reach agreement on an appropriate
24 cure for the alleged violation. After such thirty (30) day period, the Party seeking to enforce may,
25 by new action, motion, or order to show cause before the Superior Court of Alameda, seek to
26 enforce the terms and conditions contained in this Consent Judgment.

1 **4. PAYMENTS**

2 4.1 **Payments by Settling Defendants.** Within five (5) days of the entry of this
3 Consent Judgment, Settling Defendant shall pay the total sum of \$35,000 as a settlement payment.

4 4.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall
5 be paid in three separate checks in the amounts specified below and delivered to the offices of the
6 Lexington Law Group (Attn: Eric S. Somers), 503 Divisadero Street, San Francisco, California
7 94117. Any failure by Settling Defendant to comply with the payment terms herein shall be
8 subject to a stipulated late fee in the amount of \$100 for each day after the delivery date the
9 payment is received. The late fees required under this Section shall be recoverable, together with
10 reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 3 of this
11 Consent Judgment. The funds paid by Settling Defendant shall be allocated as follows:

12 4.2.1 \$4,600 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).
13 CEH shall apportion this payment in accordance with Health & Safety Code § 25249.12 (25% to
14 CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment).
15 Accordingly, the civil penalty payment check shall be made payable to the Center for
16 Environmental Health and associated with taxpayer identification number 94-3251981.

17 4.2.2 \$6,900 as a payment in lieu of civil penalty to CEH pursuant to Health &
18 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH shall use
19 such funds to continue its work educating and protecting people from exposures to toxic
20 chemicals, including heavy metals. In addition, as part of its Community Environmental Action
21 and Justice Fund, CEH will use four percent of such funds to award grants to grassroots
22 environmental justice groups working to educate and protect people from exposures to toxic
23 chemicals. The method of selection of such groups can be found at the CEH web site at
24 www.ceh.org/justicefund. The payment pursuant to this Section shall be made payable to the
25 Center For Environmental Health and associated with taxpayer identification number 94-3251981.

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1 4.2.3 \$23,500 as a reimbursement of a portion of CEH’s reasonable attorneys’
2 fees and costs. The attorneys’ fees and costs reimbursement check shall be made payable to the
3 Lexington Law Group and associated with taxpayer identification number 94-3317175.

4 **5. MODIFICATION**

5 5.1 **Modification.** This Consent Judgment may be modified from time to time by
6 express written agreement of the Parties, with the approval of the Court, or by an order of this
7 Court upon motion and in accordance with law.

8 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
9 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
10 modify the Consent Judgment.

11 **6. CLAIMS COVERED AND RELEASE**

12 6.1 This Consent Judgment is a full, final and binding resolution between CEH on
13 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,
14 affiliated entities that are under common ownership, directors, officers, employees, shareholders
15 and their successors and assigns, and attorneys (“Defendant Releasees”), and all entities to which
16 Settling Defendant distributes or sells Licorice Products, including but not limited to distributors,
17 wholesalers, customers, retailers, re-packagers, franchisees, licensors and licensees (“Downstream
18 Releasees”), of any violation of Proposition 65 based on failure to warn about alleged exposure to
19 Lead contained in Licorice Products that were sold by Settling Defendant prior to the Effective
20 Date.

21 6.2 CEH, acting in the public interest, releases, waives, and forever discharges any and
22 all claims against Settling Defendant, Defendant Releasees, and Downstream Releasees arising
23 from any violation of Proposition 65 that has been or could have been asserted regarding the
24 failure to warn about exposure to Lead arising in connection with Licorice Products manufactured,
25 distributed or sold by Settling Defendant prior to the Effective Date.

26 6.3 CEH, for itself only, releases, waives, and forever discharges any and all claims
27 against Settling Defendant, Defendant Releasees, and Downstream Releasees arising from any

1 violation of Proposition 65 or any other statutory or common law claim that has been or could
2 have been asserted regarding the failure to warn about exposure to Lead arising in connection with
3 Licorice Products manufactured, distributed or sold by Settling Defendant prior to the Effective
4 Date.

5 6.4 Compliance with the terms of this Consent Judgment by Settling Defendant and
6 Settling Defendant's Defendant Releasees shall constitute compliance with Proposition 65 by such
7 Settling Defendant, Settling Defendant's Defendant Releasees, and Settling Defendant's
8 Downstream Releasees with respect to any alleged failure to warn about Lead in Licorice Products
9 manufactured, distributed or sold by Settling Defendant after the Effective Date.

10 6.5 Nothing in this Consent Judgment affects CEH's right to commence or prosecute
11 an action under Proposition 65 against any person other than Settling Defendant, Defendant
12 Releasees, or Downstream Releasees. Nothing in this Consent Judgment affects CEH's right to
13 commence or prosecute an action under Proposition 65 against Settling Defendant related to
14 exposure to Lead from Licorice Products that do not meet the Reformulation Levels after the
15 dates set out in Section 2.3 or the Warning Option as set out in Section 2.4.

16 **7. PROVISION OF NOTICE**

17 7.1 When CEH is entitled to receive any notice under this Consent Judgment, the
18 notice shall be sent by first class and electronic mail to:

19
20 Eric S. Somers
21 Lexington Law Group
22 503 Divisadero Street
23 San Francisco, CA 94117
24 esomers@lexlawgroup.com

25 7.2 When Settling Defendant is entitled to receive any notice under this Consent
26 Judgment, the notice shall be sent by first class and electronic mail to:

27 Gary C. Cooper
28 Law Offices of Gary C. Cooper
29 247 Yale Avenue
30 Kensington, CA 94708
31 gcc@gcooperlaw.com

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

8. COURT APPROVAL

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

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

9. GOVERNING LAW AND CONSTRUCTION

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

10. ATTORNEYS' FEES

10.1 A Party who unsuccessfully brings or contests an action arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and 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 Civil Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

10.2 Notwithstanding Section 10.1, a Party who prevails in a contested enforcement 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 seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and this provision shall not be construed as altering any procedural or substantive requirements for obtaining such an award.

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

1 **11. ENTIRE AGREEMENT**

2 11.1 This Consent Judgment contains the sole and entire agreement and understanding
3 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
4 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
5 and therein. There are no warranties, representations, or other agreements between the Parties
6 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
7 other than those specifically referred to in this Consent Judgment have been made by any Party
8 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
9 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
10 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
11 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
12 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
13 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
14 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
15 whether or not similar, nor shall such waiver constitute a continuing waiver.

16 **12. RETENTION OF JURISDICTION**

17 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
18 Consent Judgment.

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

20 13.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
21 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
22 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

24 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
25 against an entity that is not a Settling Defendant on terms that are different than those contained in
26 this Consent Judgment.

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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:**

Judge Wynne Carvill

Dated:

SEP. 09 2015

Judge of the Superior Court of the State of California

Wynne Carvill

1 **IT IS SO STIPULATED:**


2

3 Dated: May 29, 2015

4

5

6 **CENTER FOR ENVIRONMENTAL HEALTH**

7 

8 Signature

9 Charles Pizzano

10 Printed Name

11 Associate Director

12 Title

13

14 Dated: _____, 2015

15

16 **FIRST INDO-AMERICAN CORP.**

17

18

19 Signature

20

21 Printed Name

22

23

24

25

26

27

28 Title

1 **IT IS SO STIPULATED:**

2

3 Dated: _____, 2015

4

5 **CENTER FOR ENVIRONMENTAL HEALTH**

6 _____

7 Signature

8 _____

9 Printed Name

10 _____

11 Title


12

13

14 Dated: June 6, 2015

15

16 **FIRST INDO-AMERICAN CORP.**

17 

18 _____

19 Signature

20 _____

21 Hee Tan

22 Printed Name

23 _____

24 President

25 Title

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