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FILED
San Francisco County Superior Court
FEB 25 2026
CLERK OF THE COURT
BY: Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

GABRIEL ESPINOZA,

Plaintiff,

v.

KING ARTHUR BAKING COMPANY, INC.,

Defendant.

Case No.: CGC-24-620185

CONSENT JUDGMENT

Judge: Christine Van Aken
Dept.: 301
Hearing Date: February 25, 2026
Hearing Time: 9:00 AM
Complaint Filed: December 2, 2024

1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Gabriel Espinoza acting on behalf of the public interest (hereinafter "Espinoza") and King Arthur Baking Company, Inc. ("King Arthur" or "Defendant") with Espinoza and Defendant collectively referred to as the "Parties" and each of them as a "Party." Espinoza is an individual residing in California that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. King Arthur is alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 **Allegations and Representations.** Espinoza alleges that Defendant has exposed individuals to lead from its sales of gluten free fudge brownie mixes without providing a clear and reasonable exposure warning pursuant to Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

1.3 **Notice of Violation/Action.** On March 9, 2023, Espinoza served King Arthur and various public enforcement agencies with documents entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Defendant violated Proposition 65 for failing to warn consumers and customers that use of gluten free fudge brownie mixes exposes consumers in California to lead. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On December 2, 2024, Espinoza filed a complaint (the "Complaint").

1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all claims which were or could have been raised in the Action based on the facts alleged therein and in the Notice.

1.5 Defendant denies the material allegations contained in Espinoza's Notice and Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of law, nor as an acknowledgment that any of the Covered Products cause actual harm; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendant. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under this Consent Judgment.

2. DEFINITIONS

2.1 **Covered Products.** The term "Covered Products" means King Arthur gluten free fudge brownie mixes that are manufactured, distributed, shipped into the State of California and offered for sale in the State of California.

2.2 **Lead Covered Products.** The term "Lead Covered Products" means Covered Products that are manufactured, distributed, shipped into the State of California and offered for sale in the State of California that expose consumers to greater than 0.5 micrograms of lead pursuant to § 3.1 herein.

2.3 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is entered as a Judgment of the Court.

2.4 **Compliance Date.** The term "Compliance Date" means ninety (90) days after the Effective Date.

3. INJUNCTIVE RELIEF: PRODUCT STANDARDS AND/OR WARNINGS

3.1 Covered Product Warning Trigger Based on Lead Concentration Levels. A **Warning** or **Alternative Warning** pursuant to § 3 herein is required if, after excluding the lead contribution from cocoa-based ingredients made or supplied by any entity that is a party to the Consent Judgment in *As You Sow v. Trader Joe's Company*, Case No. CGC-15-548791[1],

[1] Or any successor Consent Judgment in the *As You Sow* litigation. See attached at Exhibit "A," a true and correct copy of the Court approved Consent Judgment in *As You Sow v. Trader Joe's Company*, Case No. CGC-15-548791.

consumption of a recommended serving size of a Covered Product as set forth on the label[2] will result in exposure to greater than 0.5 micrograms of lead (a, "Lead Covered Product").

3.1.1 The *As You Sow* Consent Judgment, as modified by Order of the Court dated November 20, 2023, requires a Proposition 65 warning with respect to cocoa based ingredients made or supplied by any entity that is a party to the Consent Judgment if the lead concentration level in such ingredients exceeds the following levels: (a) for cocoa based ingredients with up to 65% cacao content, 0.065 ppm lead, reduced to 0.060 ppm effective February 14, 2026, and to 0.055 ppm effective February 14, 2027; (b) for cocoa based ingredients with greater than 65% and up to 95% cacao content, 0.100 ppm lead, reduced to 0.095 ppm effective February 14, 2026, and to 0.090 ppm effective February 14, 2027; and (c) for cocoa based ingredients with greater than 95% cacao content, 0.200 ppm lead, reduced to 0.195 ppm effective February 14, 2026, and to 0.190 ppm effective February 14, 2027. The exclusion provided in this Section 3.1.1 shall be subject to any future modifications that may be ordered by the Court in the *As You Sow* Consent Judgment.

3.1.2 The Parties agree that if one accepts as valid the results of testing performed by Espinoza, and calculates exposure based upon an assumed once a day consumption at the recommended serving size, the exposure would have triggered a warning obligation.

3.1.3 To the extent King Arthur intends to rely on the naturally occurring exemption, they must provide Plaintiff's counsel with evidence of the amount of cocoa in the product, and the percent cacao in the cocoa, as well as the allowance in the AYS settlement. King Arthur will inform Plaintiff's counsel if the product formulation has changed with respect to the amount of cocoa in the product or the percent cacao in the cocoa.

3.2 Clear and Reasonable Warning. Commencing by or before the Compliance Date, and continuing thereafter, a clear and reasonable exposure warning shall be provided for all Lead Covered Products that King Arthur manufacturers, imports, distributes, sells, or offers for sale in

[2] If the Covered Product label contains no recommended daily servings, then the number of recommended daily servings shall be one (1).

California[3]. There shall be no obligation for King Arthur to provide an exposure warning for Covered Products or Lead Covered Products that entered the stream of commerce prior to the Compliance Date, which products are expressly subject to the releases provided herein. The warning shall consist of either the **Warning** or **Alternative Warning** described in this §§ 3.2(a) or (b), respectively:

(a) **Warning**: The "Warning" shall consist of the statement:

> **WARNING**: Consuming this product can expose you to chemicals including lead, which is known to the State of California to cause [cancer[4] and] birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

(b) **Alternative Warning**[5]: King Arthur may, but is not required to, use one of the alternative short-form warning(s) as set forth in this § 3.2(b) ("**Alternative Warning**"):

> **WARNING**: Risk of [cancer and] reproductive harm from exposure to lead. See www.P65Warnings.ca.gov/food; or
>
> **WARNING**: Can expose you to lead, a [carcinogen and] reproductive toxicant. See www.P65Warnings.ca.gov/food

3.3 A **Warning** or **Alternative Warning** provided pursuant to § 3.2 with respect to any Lead Covered Product that King Arthur manufactures, imports, distributes, sells, or offers for sale in California must print the word "**WARNING:**" in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word "**WARNING:**" must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Covered Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word "**WARNING:**". The **Warning** or **Alternative Warning** shall be affixed to or printed on the Covered Products' packaging or labeling,

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[3] This Consent Judgment shall have no effect on Covered Products or Lead Covered Products manufactured for sale outside the State of California or offered for sale outside the State of California.

[4] Defendant shall use the phrase "cancer and" in the **Warning** only if the daily lead exposure level is greater than 15 micrograms of lead as determined pursuant to the definition of Lead Covered Products, identified in § 3.1.

[5] Defendant shall use the phrase "cancer and" or "carcinogen and" in the **Alternative Warning** only if the daily lead exposure level is greater than 15 micrograms of lead as determined pursuant to the definition of Lead Covered Products, identified in § 3.1.

or on a placard, shelf tag, sign or electronic device or automatic process only if such electronic device or automatic process provides the **Warning** or **Alternative Warning** without the purchaser having to seek it out, provided that the **Warning** or **Alternative Warning** is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Covered Product and shall be at least the same size as those other safety warnings. Where the **Warning** or **Alternative Warning** is provided on the food product label, it must be set off from other surrounding information, and King Arthur shall enclose the **Warning** or **Alternative** Warning in a black box and comply with the content requirements specified in § 25607.2. If "consumer information," as that term is defined in Title 27, California Code of Regulations, § 25600.1(c) as it may be amended from time to time, is provided in a foreign language, King Arthur shall provide the **Warning** or **Alternative Warning** in the foreign language in accordance with applicable warning regulations adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA").

With respect to any Lead Covered Product that King Arthur manufactures, imports, distributes, sells, or offers for sale in California, in addition to affixing the **Warning** or **Alternative Warning** to the Covered Product's packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where King Arthur offers Covered Products for sale to consumers in California. The requirements of this Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word "**WARNING,**" appears on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. To comply with this Section with respect to any Lead Covered Product that King Arthur manufactures, imports, distributes, sells, or offers for sale in California, King Arthur shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the

ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide such sellers with written notice in accordance with Title 27, California Code of Regulations, § 25600.2. Third-party internet sellers of the Product that have been provided with written notice in accordance with Title 27, California Code of Regulations, § 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning requirements of this Section.

3.4 Compliance with Warning Regulations. The Parties agree that King Arthur shall be deemed to be in compliance with this Agreement by either adhering to § 3 of this Agreement or by complying with warning regulations adopted by the State of California's OEHHA applicable to the Covered Product and the exposure at issue. If OEHHA adopts new warning regulations applicable to the Covered Products and exposures at issue, Defendant may choose to provide these warnings at its discretion.

3.5 Right to Cure (And No Assignment or Transfer of Claims). Espinoza shall have the exclusive right to enforce the provisions of this Consent Judgment. Espinoza represents and warrants neither he nor his agents or attorneys have assigned or otherwise transferred, or attempted to assign, or transfer, any claim or claims against Defendant to a third-party.

To the extent Espinoza identifies any Covered Product and/or Lead Covered Product in the future which he believes is not in compliance with this Consent Judgment, Espinoza agrees to advise Defendant of such alleged breach in the manner set forth in Section 8, and provide Defendant with sixty (60) days (calculated from the date notice is provided electronically) to cure any alleged violation of this Consent Judgment pursuant to the options in §§ 3.2 – 3.3, as applicable. Such Notice to Cure to Defendant must include photographs of the Covered Product's labeling and packaging, purchase receipt reflecting when and where the Covered Product was purchased in California, and comprehensive test data including all laboratory QA/QC documentation establishing that consumption of the Covered Product will expose California consumers to lead. All documentation submitted in support of the Notice to Cure must be unredacted.

Espinoza reserves the right to seek additional civil penalties, reimbursement of reasonable attorney's fees and costs, and any other available remedies arising from or related to Notices to Cure associated with Covered Products covered by the Consent Judgment. However, Espinoza shall not be entitled to seek or recover any civil penalties, and Espinoza and his counsel shall not be entitled to recovery or reimbursement of attorney's fees and/or costs, or any other available remedies arising from or related to Notices to Cure associated with Covered Products covered by the Consent Judgment or the alleged breach or violation of the Consent Judgment, provided Defendant timely remedies the alleged non-compliance within sixty (60) days of receiving the Notice to Cure, as discussed herein. If Defendant cures the alleged non-compliance within 60 days of receiving the Notice to Cure, Defendant shall not be deemed in breach or violation of this Consent Judgment in any respect, and Defendant shall not be liable (whether for civil penalties or attorneys' fees or costs) for sales of such Products referenced in the Notice to Cure occurring prior to the expiration of the 60-day cure period.

3.5.1 Testing Results and Validation. If testing of a Covered Product that entered the stream of commerce after the Compliance Date reveals a lead level in excess of the Covered Product Warning Trigger, such result shall require validation before any violation can be claimed. Specifically, the testing laboratory must first comprehensively validate its equipment calibration, testing processes, validation procedures, potential contamination sources, operator error, and all quality control measures. If any irregularity is identified, the result shall be discarded.

3.5.2 Any compliance verification testing shall be performed by a laboratory that has received a Certificate of Accreditation from the ANSI National Accreditation Board that the lab meets the requirements of ISO/IEC 17025:2017 in the field of Testing, or any successor to that standard that may be adopted by the ANSI National Accreditation Board. The testing shall employ inductively coupled plasma mass spectrometry ("ICP-MS") utilizing scientifically appropriate adherence to the protocols set forth in AOAC Method 2015.01 with a LOD/LOQ of 0.010 ppm or less.

4. MONETARY TERMS

4.1 **Total Settlement Amount.** Within thirty (30) days of the entry of the Agreement, Defendant shall pay the total sum of $29,000 as the Total Settlement Amount in connection with the Covered Products, which shall be apportioned into a Civil Penalty, Attorney's Fees and Costs as follows:

4.1.1 Civil Penalty. King Arthur shall pay $2,000.00 as a Civil Penalty pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil Penalty remitted to Espinoza, as provided by California Health & Safety Code § 25249.12(d).

4.1.2 Within ten (10) days of the Effective Date, King Arthur shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of $1,500.00; and to (b) "Gabriel Espinoza" in the amount of $500.00. Payment owed to Espinoza pursuant to this Section shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

Espinoza and his counsel will provide completed IRS 1099, W-9, or other tax forms as required. Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

A copy of the check payable to OEHHA shall be mailed to Brodsky Smith at the address set forth above as proof of payment to OEHHA.

4.1.3 Attorneys' Fees. Within ten (10) days of the Effective Date, King Arthur shall pay $27,000.00 to Brodsky Smith as complete reimbursement for Espinoza's attorneys' fees and costs incurred as a result of investigating, bringing this matter to the attention of King Arthur, litigating and negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.

5. RELEASE OF ALL CLAIMS

5.1 **Release of King Arthur, its Upstream Suppliers and Downstream Customers and Entities.** This Consent Judgment is a full, final, and binding resolution between Espinoza acting on his own behalf, and on behalf of the public interest, and King Arthur, and its parents, shareholders, members, directors, officers, managers, employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors, successors and assigns ("Defendant Releasees"), and all entities to whom any Defendant Releasee directly or indirectly acquires from, and/or distributes or sells Covered Products, including but not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers, and their parents, subsidiaries, and affiliates, franchisees, and cooperative members ("Downstream Releasees"), of all claims for violations of Proposition 65 that were or could have been asserted against Defendant Releases or Downstream Releasees based on exposure to lead from consumption of the Covered Products. It is the Parties' intention that this Consent Judgment shall have preclusive effect such that no other actions by private enforcers, whether purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and take any action against Defendant Releases or Downstream Releasees with respect to any violation of Proposition 65 based on exposure to lead from consumption of the Covered Products. King Arthur's compliance with the terms of this Consent Judgment shall constitute compliance with Proposition 65 by King Arthur with regard to exposure to lead from consumption of the Covered Products.

5.2 In addition to the foregoing, Espinoza, on behalf of himself, his past and current agents, representatives, attorneys, and successors and assignees, and *not* in his representative capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases King Arthur, Defendant Releasees, and Downstream Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with respect to any alleged violations of Proposition 65 related to or arising from Covered Products manufactured, distributed, or sold by King Arthur, Defendant Releasees or Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph, Espinoza hereby specifically waives any and all rights and benefits which he now has, or in the future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5.3 Espinoza and his counsel represent and warrant that they are not aware of any other person who has filed or is contemplating filing, and that they have not engaged and do not intend to engage in any advertising or solicitation to locate additional persons to file, any form of complaint against Defendant and/or Releasees regarding exposure to lead from consumption of Covered Products.

5.4 King Arthur waives any and all claims against Espinoza, his attorneys and other representatives, for any and all actions taken, or statements made (or those that could have been taken or made) by Espinoza and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and with respect to Covered Products.

6. INTEGRATION

6.1 This Consent Judgment contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

7. GOVERNING LAW

7.1 The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California.

8. NOTICES

8.1 Unless specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For Defendant:

Ashley Simonsen
Covington & Burling LLP
1999 Avenue of the Stars
Los Angeles, CA 90067

For Espinoza:

Evan Smith
Brodsky Smith
9465 Wilshire Blvd., Ste. 300
Beverly Hills, CA 90212

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS; FACSIMILE SIGNATURES

9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of which shall be deemed original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT APPROVAL

10.1 Espinoza agrees to comply with the requirements set forth in California Health & Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment. Defendant agrees it shall support the approval of such Motion.

10.2 This Consent Judgment shall not be effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved by the Court, in which case no payments shall be owed under the Consent Judgment. In such case, the Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30 days, the case shall proceed on its normal course.

10.3 If the Court approves this Consent Judgment and is reversed or vacated by an appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on its normal course on the trial court's calendar.

11. MODIFICATION

11.1 This Consent Judgment may be modified only by further stipulation of the Parties and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

12. ATTORNEY FEES

12.1 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 attorney's fees and costs.

12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

13. RETENTION OF JURISDICTION

13.1 This Court's retained jurisdiction of this matter to implement, modify, or enforce the Consent Judgment shall expire five (5) years after the Effective Date unless extended by mutual agreement of the Parties.

14. SEVERABILITY

14.1 If, subsequent to court approval of this Consent Judgment, any of the provisions of this Agreement are held by a court to be unenforceable or preempted, the validity of the enforceable provisions remaining shall not be adversely affected.

15. AUTHORIZATION

15.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agreed to all of the terms and conditions of this document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein, each Party is to bear its own fees and costs.

AGREED TO:

Date: _____

By: See next page
GABRIEL ESPINOZA

AGREED TO:

Date: 09/10/2025

By: _____
KING ARTHUR BAKING COMPANY, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

See next page
Judge of Superior Court

15. AUTHORIZATION

15.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agreed to all of the terms and conditions of this document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein, each Party is to bear its own fees and costs.

AGREED TO:

Date: 9/12/25

By: _____
GABRIEL ESPINOZA

AGREED TO:

Date: _____

By: See previous page
KING ARTHUR BAKING COMPANY, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 2/25/2026

_____
Judge of Superior Court
CHRISTINE VAN AKEN

EXHIBIT "A"

FILED
Superior Court of California
County of San Francisco
FEB 15 2018
CLERK OF THE COURT
BY: _____ Deputy Clerk

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Attorneys for Plaintiff
AS YOU SOW

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

AS YOU SOW, a California Non-Profit Public Benefit Corporation,

Plaintiff,

v.

TRADER JOE'S COMPANY, et al.,

Defendants.

Case No. CGC-15-548791

~~[PROPOSED] ORDER GRANTING MOTION TO ENTER~~ **CONSENT JUDGMENT**

Date: February 14, 2018
Time: ~~2:00 p.m.~~ 3:00PM
Dept.: 504
Judge: Hon. Suzanne R. Bolanos

Complaint Filed: November 3, 2015
Trial Date: April 9, 2018

The motion of Plaintiff As You Sow came on for hearing on February 14,2018. Having considered all papers filed and arguments presented by the parties and Abbott Laboratories Inc., the Court finds that the Consent Judgment, which has been modified by the parties to substitute Exhibit D* for its original Exhibit D, meets the requirements of Health & Safety Code Section 25249.7 (f)(4) and is in the public interest.

IT IS HEREBY ORDERED ~~that the motion to approve and enter~~ the Consent Judgment as modified is GRANTED. ~~The clerk shall therefore proceed to enter the Consent Judgment in the form attached hereto as Exhibit 1.~~

DATED: 2/15, 2018

Hon. Suzanne R. Bolanos
Judge of the Superior Court

971633.1

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Attorneys for Plaintiff
AS YOU SOW

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

AS YOU SOW, a California Non-Profit Public Benefit Corporation, Plaintiff, v. TRADER JOE'S COMPANY, and DOES 1 through 10, inclusive, Defendants.	Case No. CGC-15-548791 **CONSENT JUDGMENT (as modified to contain Exhibit D* in lieu of prior Exhibit D)** Complaint Filed: November 3, 2015 Trial Date: April 9, 2018

1. INTRODUCTION

1.1 As You Sow ("AYS") is a non-profit corporation dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of worker and consumer rights, environmental education, and corporate accountability. AYS is based in Oakland, California and is incorporated under the laws of the State of California.

1.2 Between July 18, 2014 and November 10, 2017, AYS sent Proposition 65 (California Health & Safety Code Sections 25249.5, et seq.) 60-day Notices of Violation ("Notices") to various companies, including all of those companies identified as "Initial Settling Defendants" (as defined in Section 2) that are listed in **Exhibit A**. The Notices were also sent by AYS to all relevant public enforcers, as required by Health & Safety Code Section 25249.7(d).

1.3 In the Notices, AYS states that that the Chocolate Products manufactured, distributed, and/or sold by the noticed companies, which are offered for sale to California consumers, and/or which are used in products offered for sale to consumers in California, cause exposures to lead and/or cadmium and that such Chocolate Products require warnings under Health and Safety Code Section 25249.6.

1.4 After AYS's October 24, 2017 Notice has run its course, and assuming no authorized public prosecutor has filed a superseding claim, AYS individually and on behalf of the public interest, will amend a Proposition 65 enforcement action concerning lead and cadmium in the Chocolate Products that it had previously filed in the Superior Court of the State of California for the County of San Francisco, Case No. CGC-15-548791 (the "Action") in contemplation of a motion for approval and entry of this Consent Judgment. The amended complaint filed in the Action asserted a cause of action against each of the Initial Settling Defendants for the alleged failure to warn under Proposition 65 on the basis of the allegations contained in the Notices.

1.5 Each Initial Settling Defendant (as defined in Section 2 and listed on **Exhibit A**) employs ten or more employees and manufactures, imports, distributes, sells, and/or directly or indirectly offers for sale in California Chocolate Products or has done so in the past. Each Initial

Settling Defendant represents that, as of the date it executes this Consent Judgment, no public enforcer is diligently prosecuting a Proposition 65 action against it related to lead or cadmium in its Chocolate Products.

1.6 For the purpose of avoiding prolonged and costly litigation concerning the claims and defenses in this Action, the Parties (as defined in Section 2) enter into this Consent Judgment as a full settlement of all Proposition 65 claims that were raised in the Action, or which could have been raised in the Action, based on the facts alleged therein. By execution of this Consent Judgment, Settling Defendants do not admit any violation of Proposition 65 or any other law. Nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or affect the responsibilities and duties of the Parties under this Consent Judgment.

2. DEFINITIONS

2.1 "Chocolate Product" means chocolate candy; chocolate bars, pieces, chips, beverages, and chocolate-based confections with or without inclusions; cocoa nibs and cocoa powder; chocolate and cacao-based compounds in any form; and other products derived primarily (i.e., in excess of 50%) from cacao. Chocolate Products include the preceding as sold on a standalone basis and/or as sold to be used as ingredients in other foods into which they are incorporated.

2.2 "Compliance Date" means one year following the Effective Date.

2.3 "Consensus Basis" means a creative and dynamic way of reaching agreement between all members of a group. Instead of simply voting for an item and having the majority of the group dictate the outcome, a group using consensus is committed to finding solutions that each member of the group actively supports, or at least can live with and that all opinions, ideas and concerns are taken into account. A Consensus Basis does not reflect compromise or unanimity – it aims to go further by weaving together everyone's best ideas and key concerns. It is an acceptable resolution, one that can be supported, even if not the "favorite" of each individual. Multiple concerns and information shall be shared until the sense of the group is clear. Ideas and solutions belong to the group; no names are recorded. The group as a whole is

responsible for the decision and the decision belongs to the group. The goal is unity, not unanimity.

2.4 "Covered Product" means a Chocolate Product that is manufactured, imported, distributed, or sold by a Settling Defendant, including, but not limited to, the exemplar Chocolate Product identified in a 60-Day Notice of Violation served on the Settling Defendant by AYS.

2.5 "Effective Date" means the date on which this Consent Judgment is entered by the Court.

2.6 "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account public health, and economic, environmental, social, and technological factors. In considering whether an action or performance level is Feasible, consideration shall be given, among other things, to scaling as to the size and resources of the potential implementing enterprise involved, the implementing enterprise's place and role within the chain of commerce, the prior demonstration of the viability of the concept or technology at issue at both the research and actual commercial application scale, and the nature of the issue being addressed.

2.7 "Lot" means all units of a given Chocolate Product bearing the same lot number, best-by, or sell-by date.

2.8 "Opt-In Settling Defendants" refers to Settling Defendants that join into this Consent Judgment pursuant to the procedure established in Section 7.

2.9 "Opt-In Stipulation" means a Stipulation for Entry of Judgment in the form attached hereto as **Exhibit B**, for execution by a prospective Opt-In Settling Defendant pursuant to the procedure established in Section 7.

2.10 "Parties" means AYS and Settling Defendants taken together; a "Party" means As You Sow or any particular Settling Defendant taken individually.

2.11 "Settling Defendant" means a defendant who is a Party to this Consent Judgment at the time it is entered, or who opts in to this Consent Judgment any time after its entry pursuant to the procedure established in Section 7. The former are also specifically referred to

herein as "Initial Settling Defendants" (i.e., the companies specifically listed on **Exhibit A**) and the latter are also specifically referred to herein as "Opt-In Settling Defendants."

3. INVESTIGATION REGARDING SOURCES AND POTENTIAL FOR REDUCTION OF LEAD AND CADMIUM IN CHOCOLATE PRODUCTS

3.1 **Overview.** An expert committee ("Committee") shall be formed to investigate and report on the predominant sources of lead and cadmium in Chocolate Products, and to make findings and recommendations on Feasible measures that may be taken, if any, to meaningfully reduce levels of lead and cadmium found in Chocolate Products. The Committee's charges include:

3.1.1. Researching and identifying the sources of lead and cadmium levels in chocolate products, including both natural and anthropogenic sources ("Root Cause Phase");

3.1.2. Identifying and making recommendations regarding Feasible means to reduce lead and cadmium levels over the nearer and longer term, such as through agricultural practices, manufacturing practices, and handling practices ("Reduction Recommendations Phase");

3.1.3. Evaluating and making recommendations as to whether, and, if so, when, the lead and cadmium concentration levels in Chocolate Products that trigger Proposition 65 warnings shall be modified from the "drop down" levels described in Sections 6.2.1 and 6.2.2 of this Consent Judgment based on Feasible means to reduce lead and cadmium levels over time ("Warning Trigger Phase");

3.1.4. Preparing and submitting a final report with all Consensus Based Committee findings and recommendations, including an appendix setting forth significant areas where consensus could not be achieved, an appendix setting forth any significant conflicting opinions on aspects of a Consensus Based finding where they exist, and an appendix containing complete citations for all source materials used ("Final Report Phase"); and

3.1.5. Providing an oral presentation to the Parties to address follow up questions or inquiries regarding the final report at a Committee member's discretion.

3.2 **Formation and Direction of the Committee.** The Committee shall consist of four subject matter experts ("SMEs") and be supported by a retained project manager ("Project Manager"). Within one hundred and twenty (120) days of the Effective Date, AYS, on the one hand, and the Initial Settling Defendants, on the other hand, shall each appoint a qualified SME to the Committee and shall jointly agree upon and appoint a third and fourth SME to the Committee. These four individuals shall form the Committee.

3.2.1. SMEs shall be selected based on the following criteria:

(a) One SME selected by the Chocolate Industry with a relevant background and expertise.

(b) One SME selected by As You Sow with a relevant background and expertise.

(c) One additional SME with potential cadmium and cocoa expertise as mutually identified with relevant backgrounds and expertise.

(d) One additional SME with potential lead and cocoa expertise as mutually identified with relevant background and expertise.

3.2.2. In addition to the SMEs, one Project Manager shall be mutually identified with relevant project management experience, who will provide administrative and logistical support to the Committee, facilitate discussion among the Committee members, and help manage its budget and keep it organized and on schedule in addressing the requirements and timelines set forth in this Consent Judgment.

3.2.3. In the event a member of the Committee can no longer perform their duties, a replacement member shall be appointed by the original nominating Party or Parties. AYS and the Initial Settling Defendants shall jointly agree on the replacement for a member who was originally jointly appointed. The Party or Parties appointing a replacement member shall first confer with the remaining members of the Committee concerning potential replacement nominees and solicit their input on appropriate candidates and qualifications. In the event of a resignation of the retained project manager, AYS and the Initial Settling Defendants shall jointly agree upon and arrange for the prompt retention of a replacement.

3.2.4. Within one hundred fifty (150) days of the Effective Date, AYS and the Initial Settling Defendants, or a representative acting on the Initial Settling Defendants' collective behalves, shall hold a kickoff meeting with the Committee and the retained project manager to review the Scope of Work attached hereto as **Exhibit C**, which shall be provided to the Committee members and the Project Manager along with a copy of this Consent Judgment upon the Committee's formation. The Scope of Work shall, following clarifications or modifications agreed upon by AYS and the Initial Settling Defendants made at or after the kickoff meeting, guide the Committee's investigation and be binding on the Parties.

3.3 **Operation of Committee.**

3.3.1. The Committee shall operate on a Consensus Basis and within the budget agreed upon by the Parties. It shall accept reasonable and relevant input from any willing source available and evaluate its content based on professional standards and judgment consistent with the Committee members' prior experience. The preliminary allocation of this budget to different aspects of the Committee's work is set forth below, but it and the overall level of expenditure will be subject to adjustment by mutual agreement of AYS and the Initial Settling Defendants based on a request received from the Project Manager at or following the kickoff meeting referred to in Section 3.2.4. In no event shall the budget, inclusive of the cost of the Project Manager, exceed the aggregate cap agreed upon by the Parties under Section 8.5 of this Consent Judgment.

3.3.2. Approximately three quarters (3/4ths) of the Committee's overall budget shall be devoted to its investigative and assessment activities (including as supported by the Project Manager), and one quarter (1/4th) of the Committee's overall budget shall be devoted to formulating its findings and preparing the final report, unless the Committee determines that another allocation of funds is more appropriate, and the Project Manager informs and obtains the approval of AYS and the Initial Settling Defendants of such a revised allocation. The Committee shall complete the Root Cause Phase within nine (9) months from the date of the kickoff meeting established pursuant to Section 3.2.4; the Committee shall complete the Reduction Recommendations Phase within eighteen (18) months from the date of the kickoff

meeting established pursuant to Section 3.2.4. Through the Project Manager, the Committee shall provide AYS and the Initial Settling Defendants with brief quarterly progress reports concerning the status of the relevant investigation and the overall budget and identify any significant obstacles that may have arisen relative to timely completion of the Committee's work. The deadlines set forth in this Section 3.3.2 may be modified with the agreement of both AYS and the Initial Settling Defendants based on a significant obstacle to timely completion that has been identified in a progress report or otherwise presented by Project Manager due to unforeseeable circumstances or other reasonable and justifiable need.

3.3.3. Members of the Committee and the Project Manager shall sign a confidentiality agreement concerning their work undertaken pursuant to this Consent Judgment and shall not be subject to deposition concerning such work. Nor shall internal working documents created by members of the Committee or the Project Manager during the course of their work pursuant to this Consent Judgment, such as notes and drafts reflecting their mental impressions, be discoverable or otherwise disclosed. Documents the Committee or its members have obtained from public sources that members of the Committee have relied on to reach the recommendations they provide pursuant to Section 3.3.4 are not subject to the discovery restrictions of this Section. The final report the Committee issues pursuant to Section 3.3.4 shall likewise be subject to disclosure and may be made publically available by any Party, as long as any information that is subject to the requirements of Section 3.4.4 have been redacted from it.

3.3.4. No later than one hundred eighty (180) days after the conclusion of the Root Cause Phase and the Reduction Recommendation Phase, the Committee shall complete the Warning Trigger Phase and Final Report Phase and issue its final report to the Parties regarding the findings and recommendations the Committee. Subject to Sections 3.3.3 and 3.4.4, AYS and the Initial Settling Defendants shall have access to review the materials upon which the Committee has relied in performing its work, which the Project Manager shall arrange to preserve for a period of five (5) years.

3.4 **Means of Investigation by the Committee.**

3.4.1. As described in the Scope of Work, the Committee's investigation should be based on a number of sources (whether existing or produced at the Committee's request), including an initial literature review (including peer-reviewed published articles to the extent possible); reviewing test data regarding cocoa beans and Chocolate Products; testing of production equipment, packaging and equipment and materials used in the drying and storage of cocoa beans and testing of cocoa beans and Chocolate Products (including in relation to testing of production equipment, product packaging, and drying and storage methods); travel to cocoa growing areas and processing plants; and interviews with academics, government agencies, chocolate growers, chocolate suppliers, and chocolate manufacturers or others who have relevant expertise on the subject. The Committee may also consult with outside subject matter experts that are necessary to assist in the Committee's work.

3.4.2. To inform the investigation, each Initial Settling Defendant shall make available to the Committee, on a rolling basis and, at most, within one hundred twenty (120) days of the Effective Date, relevant information in its possession regarding lead and cadmium in chocolate, including relevant test data regarding cocoa beans, cocoa butter, and/or Chocolate Products and the results of any prior non-privileged substantive investigations into the sources of lead and cadmium in cocoa beans and/or Chocolate Products.

3.4.3. The Committee may, at any time, reasonably request further information (including existing test data) and/or samples of cocoa beans and Chocolate Products from one or more Settling Defendants relevant to the Scope(s) of Work and the relevant Settling Defendants shall make a good-faith effort to provide such requested information to the Committee within thirty (30) days of the Committee's reasonable request.

3.4.4. Any information provided to the Committee may be provided anonymously (i.e., on a blinded basis and through an intermediary entity such as a trade association or law firm) in order to protect proprietary or commercially sensitive business information, and the members of the Committee shall not disclose or disseminate to others any information they receive from a Settling Defendant or, if it has been provided to the Committee through another

entity, the source from which the Committee obtained such Settling Defendant-originated information.

4. IMPLEMENTATION OF INVESTIGATION FINDINGS

4.1 Within one hundred twenty (120) days of the issuance of the Committee's final report pursuant to Section 3.3.4, AYS and the Initial Settling Defendants (or a designated representative thereof) shall begin to meet and confer to determine whether the drop down warning triggers set forth under Sections 6.2.1 and 6.2.2 of the Consent Judgment should be modified based on the final report of the Committee. Such meet and confer period should extend for a period of at least ninety (90) days, unless AYS and the Initial Settling Defendants mutually agree to extend it, including to allow for the involvement of a mediator. Following the conclusion of this meet and confer process, and no earlier than one hundred and twenty (120) days after the commencement of the meet and confer process, AYS and/or the Initial Settling Defendants may, as informed by the Committee's final report, jointly stipulate to or individually move for a modification of this Consent Judgment pursuant to Section 10, including with respect to any upward or downward adjustments of the drop down lead and cadmium warning triggers set forth under Sections 6.2.1 and 6.2.2. Any Party may oppose such a modification before the Court. If entered by the Court, such a modification shall be binding on and effective as to all Settling Defendants, including Opt-In Settling Defendants, one year following written notice to them of the Court's action approving of the modification.

4.2 If no modification is entered by the Court pursuant to Section 4.1, the "drop down" warning triggers set forth in Sections 6.2.1 and 6.2.2 shall automatically go into effect as scheduled.

5. BEST PRACTICES AND COMPLIANCE VERIFICATION TESTING

5.1 **Required Provisional Efforts to Ensure Lowest Level Currently Feasible.** During the Committee's investigation and while the resulting meet and confer and any modification process is underway, all Settling Defendants who are cocoa, chocolate, or candy manufacturers (as opposed to retailers or distributors) must certify to AYS annually for five (5) years following the Compliance Date that they have complied with FDA's applicable Good

Manufacturing Practice and Preventive Controls for Human Food requirements (21 C.F.R. Part 117) for their Covered Products distributed and sold in the United States as reviewed by a qualified internal or third party food safety auditor.

5.2 **Compliance Verification Testing and Enforcement Procedures.** Utilizing the funding provided by the Settling Defendants under Section 8.6, AYS will conduct compliance verification testing after the requirements of Section 6 of this Consent Judgment become effective. Any such testing and the provisions set forth in the remainder of this Section 5 shall govern AYS's enforcement of Section 6 of this Consent Judgment. AYS's compliance verification testing conducted pursuant to this Section 5 shall only utilize Covered Product samples that (a) AYS obtains only from the California market or which are shipped to a California address as the result of a purchase by AYS or its investigators via the internet, (b) have been manufactured following the Compliance Date as identified by the Covered Product's Lot identifier, and (c) do not bear the warning required by Section 6.3.

5.3 In conducting compliance verification testing, AYS shall use a laboratory that employs inductively coupled plasma mass spectrometry ("ICP-MS") utilizing scientifically appropriate adherence to the protocols set forth in AOAC Method 2015.01 with a LOD/LOQ of 0.010 ppm or less.

5.4 **Outlier Test Results.**

5.4.1. Any single test result obtained that exceeds 0.300 ppm of lead for a product with less than 95% cacao content or 0.450 ppm of lead for a product with 95% or greater cacao content; or 0.900 ppm of cadmium for a product with less than 95% cacao content or 1.92 ppm of cadmium for a product with 95% or greater cacao content shall be deemed a potential "Outlier."

5.4.2. At a Settling Defendant's option, any single Outlier test result must be subject to validation before it is deemed to be an effective result for purposes of this Consent Judgment. The validation process shall consist of two steps:

(a) First, the laboratory from which the test result in question was obtained shall be required to check its equipment, test processes, validation procedures,

laboratory contamination, operator error, and any other factors which could have produced an erroneous result. If the result is determined erroneous due to testing error or failure to satisfy quality assurance or quality control procedures, the result shall be discarded and not used for any purpose under this Consent Judgment. The Covered Product may then be re-tested as if such test were the first test.

(b) Second, if the steps in Section 5.4.2(a) have not invalidated the result, then the Settling Defendant may, in preparation for the meet and confer process set forth in Section 5.5.4 and no later than sixty (60) days after the notice of violation is sent, collect up to three (3) or more randomly selected samples of the Covered Product from the same Lot as the Covered Product subject to the Notice of Violation. AYS, at its option, can also test up to three (3) more products from the same Lot and have those additional products tested. The arithmetic mean of these test results and the original Outlier test result shall then be determined. That mean result shall be deemed the final result concerning the sample in question and shall constitute the applicable test result for purposes of this Consent Judgment. If, between a Settling Defendant and AYS, less than two (2) additional Covered Product samples from the same Lot remain in either the Settling Defendant's or AYS's control or can reasonably be acquired through purchase, the Settling Defendant and/or AYS may use such randomly selected samples of the Covered Product as produced in the same calendar quarter as is indicated by the Lot identifier of the potential Outlier sample.

5.5 **Stipulated Enforcement Process.**

5.5.1. Notice of Violation. In the event that AYS obtains qualified laboratory test results showing that the Covered Product exceeds the applicable limit or limits set forth in Section 6.2, it may issue a Notice of Violation pursuant to this Section 5.5. For the purposes of this Consent Judgment, "Notice of Violation" shall mean violations of the Consent Judgment and is not a sixty day notice subject to the requirements of California Code of Regulations Title 27 § 25903.

5.5.2. Service of Notice of Violation and Supporting Documentation.

(a) The Notice of Violation shall be sent to the person(s) identified in Section 19 to receive notices for the Settling Defendant in question, and must be served within sixty (60) days of the later of the date the Covered Product at issue was tested or the test result in question was acquired by AYS, provided, however, that AYS may have up to an additional sixty (60) days to send the Notice of Violation if, notwithstanding AYS's good faith efforts, the test data required by Section 5.4.2(a) cannot be obtained by AYS from the laboratory before expiration of the initial sixty (60) day period.

(b) The Notice of Violation shall, at a minimum, set forth: (a) the date the Covered Product was purchased; (b) the location at which the Covered Product was purchased; (c) the name of the Covered Product giving rise to the alleged violation, including the name and address of the retail entity from which the sample was obtained and pictures of the product packaging, which identifies the product's UPC number and lot number/best-by/sell-by date; and (d) all compliance verification test data obtained by AYS regarding the Covered Product, including any laboratory reports, quality assurance reports, and quality control reports associated with testing of the Covered Product.

5.5.3. Notice of Election of Response. No more than thirty (30) days after effectuation of service of a Notice of Violation, the Settling Defendant in question shall provide written notice to AYS whether such Settling Defendant elects to contest the allegations contained in a Notice of Violation ("Notice of Election"). Upon notice to AYS, Settling Defendant may have up to an additional thirty (30) days to elect if, notwithstanding Settling Defendant's good faith efforts, a Settling Defendant is unable to verify the test data provided by AYS before expiration of the initial thirty (30) day period.

(a) If a Notice of Violation is contested, the Notice of Election shall include all documents upon which the Settling Defendant is relying to contest the alleged violation, including any test data that it wishes to rely on, including any laboratory reports, quality assurance reports, and quality control reports associated with testing of the Covered

Product. (Such test data may include, but not be limited to, the test results obtained under Section 5.4.2(b), if applicable.)

5.5.4. Meet and Confer. If a Notice of Violation is contested, AYS and the Settling Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of serving a Notice of Election, a Settling Defendant may withdraw the original Notice of Election contesting the violation and serve a new Notice of Election to not contest the violation, provided, however, that, in this circumstance, such Settling Defendant shall pay AYS's actual documented fees and costs up to a cap of $5,000, in addition to the payments specified in Sections 5.5 and 5.6. for violations of the Consent Judgment. At any time, AYS may withdraw a Notice of Violation, in which case for purposes of Section 5.6, the result shall be as if AYS never issued any such Notice of Violation. If no informal resolution of a Notice of Violation results within thirty (30) days of a Notice of Election to contest, AYS may file an enforcement motion or application pursuant to Section 16. In any such proceeding, AYS may seek whatever fines, costs, penalties, attorneys' fees, or other remedies are provided by law for an alleged failure to comply with Proposition 65 or this Consent Judgment.

5.5.5. Non-Contested Notices. If a Settling Defendant elects to not contest the allegations in a Notice of Violation, it shall undertake corrective action and make payments as set forth below.

(a) A Settling Defendant electing to not contest shall include in its Notice of Election a detailed description with supporting documentation of the corrective action(s) that it has undertaken or proposes to undertake to address the alleged violation. Any such correction shall provide reasonable assurance that all Covered Products having the same UPC number and Lot identifier as that of the Covered Product identified in AYS's Notice of Violation (the "Noticed Covered Products") will not be thereafter sold in the State of California or offered for sale to California customers by the Settling Defendant without the product warning language specified in Section 6.3 having been provided prior to its sale, and that the Settling Defendant has sent instructions to any retailers or customers that offer the Noticed Covered Products for sale to cease offering the Noticed Covered Products for sale to California

consumers unless such product warning language is provided in conjunction with its sale. Settling Defendant shall also document the additional steps, including product testing and/or modification, that it will take to ensure that future Lots of the same Covered Product comply with the requirements of the Consent Judgment. A Settling Defendant shall keep for a period of one year and provide to AYS documentation confirming its implementation regarding the foregoing. If there is a dispute over the corrective action, the Settling Defendant and AYS shall meet and confer before seeking any remedy in court. In no case shall AYS issue to a Settling Defendant more than one Notice of Violation per Covered Product within a calendar quarter.

(b) If the Notice of Violation is the first Notice of Violation received by the Settling Defendant for a type of Covered Product (as identified by its UPC code) under Section 5.5.1 that was not successfully contested or withdrawn, then a Settling Defendant as defined by Sections 8.1.1 or 8.1.4 shall pay $10,000, a Settling Defendant as defined by Sections 8.1.2, 8.1.5, or 8.1.7 shall pay $7,500, and a Settling Defendant as defined by Sections 8.1.3, 8.1.6, or 8.1.8 shall pay $5,000, for each Notice of Violation. If the Notice of Violation is the second Notice of Violation received by the Settling Defendant for a Covered Product under Section 5.5.1 that was not successfully contested or withdrawn, then a Settling Defendant as defined by Sections 8.1.1 or 8.1.4 shall pay $15,000, a Settling Defendant as defined by Sections 8.1.2, 8.1.5, or 8.1.7 shall pay $12,500, and a Settling Defendant as defined by Sections 8.1.3, 8.1.6, or 8.1.8 shall pay $10,000, for each Notice of Violation. If the Notice of Violation is the third or fourth Notice of Violation received by the Settling Defendant for a Covered Product under Section 5.5.1 that was not successfully contested or withdrawn, then a Settling Defendant as defined by Sections 8.1.1 or 8.1.4 shall pay $25,000, a Settling Defendant as defined by Sections 8.1.2, 8.1.5, or 8.1.7 shall pay $20,000, and a Settling Defendant as defined by Sections 8.1.3, 8.1.6, or 8.1.8 shall pay $15,000, for each Notice of Violation.

(c) If a Settling Defendant produces with its Notice of Election test data for the Covered Product (as identified by its UPC code and a best-by or sell-by date falling within the same calendar quarter) that: (i) was obtained prior to the date AYS gave Notice of Violation; (ii) was conducted on the same type of Covered Product (as identified by its UPC

code); and (iii) demonstrates levels below the applicable warning triggers set forth in Section 6.2.1 and 6.2.2, then any payment under this Section shall be reduced by one hundred percent (100%) for the first Notice of Violation, except that the Settling Defendant shall reimburse AYS for AYS's actual documented fees and costs associated with testing the Covered Product up to limit of $5,000. Pursuant to Section 5.5.5(a), the Settling Defendant shall also document the measures, including product testing, warnings, and/or modification, that it will take to ensure that future Lots of the same Covered Product comply with the requirements of the Consent Judgment.

5.5.6. Payments. Any payments under Section 5.5.5 shall be made by check payable to "As You Sow" and shall be paid within thirty (30) days of service of a Notice of Election triggering a payment and shall be used by AYS as reimbursement for costs for investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse attorneys' fees and costs incurred in connection with these activities. To the extent such reimbursement exceeds AYS's associated costs, AYS will use these funds to replenish the Compliance Testing Fund established pursuant to Section 8.6 of this Consent Judgment.

5.6 **Repeat Violations.** If a Settling Defendant has received more than four (4) Notices of Violation concerning the same Covered Product that were not successfully contested or withdrawn in any two (2) year period then, at AYS's option, AYS may seek whatever fines, costs, penalties, attorneys' fees, or other remedies that are provided by law for failure to comply with Proposition 65. Prior to seeking such relief, AYS shall meet and confer with the Settling Defendant for at least thirty (30) days to determine if the Settling Defendant and AYS can instead agree on measures that the Settling Defendant can undertake to prevent future alleged violations.

6. INJUNCTION GOVERNING COVERED PRODUCT FORMULATIONS AND WARNINGS

6.1 **Applicability.** Covered Products subject to this Consent Judgment are subject to the requirements for Proposition 65 warnings set forth in Sections 6.3, 6.4, and 6.5, as applicable, depending on their cacao content (by %) and lead and cadmium levels as further

specified in Section 6.2. The requirements set forth in this Section 6 shall apply only to Covered Products: (a) manufactured on or following the Compliance Date, and (b) which are (i) sold or may be offered for sale to California consumers ("consumer products") or (ii) sold or may be offered for sale as inputs to Covered Products ("non-consumer products") which are sold or may be offered for sale to California consumers.

6.2 **Product Warning Triggers.**

6.2.1. **Product Warning Triggers Based on Lead Concentration Levels.**

(a) For Covered Products with up to 65% cacao content: Product Warnings are required if the Covered Product's associated lead concentration level exceeds 0.100 ppm, provided, however, that as of the sixth anniversary of the Compliance Date, the foregoing lead concentration level shall be deemed to have been reduced to 0.065 ppm unless (i) the Committee has recommended that the 0.100 ppm lead concentration level be continued, a lead concentration level between 0.100 and 0.065 ppm be instituted, or that a lead concentration level less than 0.065 ppm replace the 0.065 ppm level, and (ii) a modification of this Consent Judgment has been entered which reflects the level that shall supersede the drop down to 0.065 ppm.

(b) For Covered Products with greater than 65% and up to 95% cacao content: Product Warnings are required if the Covered Product's associated lead concentration level exceeds 0.150 ppm, provided, however, that as of the sixth anniversary of the Compliance Date, the foregoing lead concentration level shall be deemed to have been reduced to 0.100 ppm unless (i) the Committee has recommended that the 0.150 ppm lead concentration level be continued, a lead concentration level between 0.150 and 0.100 ppm be instituted, or that a lead concentration level less than 0.100 ppm replace the 0.100 ppm level, and (ii) a modification of this Consent Judgment has been entered which reflects the level that shall supersede the drop down to 0.100 ppm.

(c) For Covered Products with greater than 95% cacao content: Product Warnings are required if the Covered Product's associated lead concentration level exceeds 0.225 ppm, provided, however, that as of the sixth anniversary of the Compliance Date, the

foregoing lead concentration level shall be deemed to have been reduced to 0.200 ppm unless (i) the Committee has recommended that the 0.225 ppm lead concentration level be continued, a lead concentration level between 0.225 and 0.200 ppm be instituted, or that a lead concentration less than 0.200 ppm replace the 0.200 ppm level, and (ii) a modification of this Consent Judgment has been entered which reflects the level that shall supersede the drop down to 0.200 ppm.

6.2.2. **Product Warning Triggers Based on Cadmium Concentration Levels.**

(a) For Covered Products with up to 65% cacao content: Product Warnings are required if the Covered Product's associated cadmium concentration level exceeds 0.400 ppm, provided, however, that as of the sixth anniversary of the Compliance Date, the foregoing cadmium concentration level shall be deemed to have been reduced to 0.320 ppm unless (i) the Committee has recommended that the 0.400 ppm cadmium concentration level be continued, a cadmium concentration level between 0.400 and 0.320 ppm be instituted, or that a cadmium concentration level less than 0.320 ppm replace the 0.320 ppm level, and (ii) a modification of this Consent Judgment has been entered which reflects the level that shall supersede the drop down to 0.320 ppm.

(b) For Covered Products with greater than 65% and up to 95% cacao content: Product Warnings are required if the Covered Product's associated cadmium concentration level exceeds 0.450 ppm, provided, however, that as of the sixth anniversary of the Compliance Date, the foregoing cadmium concentration level shall be deemed to have been reduced to 0.400 ppm unless (i) the Committee has recommended that the 0.450 ppm lead concentration level be continued, a cadmium concentration level between 0.450 and 0.400 ppm be instituted, or that a cadmium concentration level less than 0.400 ppm replace the 0.400 ppm level, and (ii) a modification of this Consent Judgment has been entered which reflects the level that shall supersede the drop down to 0.400 ppm.

(c) For Covered Products with greater than 95% cacao content: Product Warnings are required if the Covered Product's associated cadmium concentration level exceeds 0.960 ppm, provided, however, that as of the sixth anniversary of the Compliance Date, the

foregoing cadmium concentration level shall be deemed to have been reduced to 0.800 ppm unless (i) the Committee has recommended that the 0.960 ppm cadmium concentration level be continued, a cadmium concentration level between 0.960 and 0.800 ppm be instituted, or that a cadmium concentration level less than 0.800 ppm replace the 0.800 ppm level, and (ii) a modification of this Consent Judgment has been entered which reflects the level that shall supersede the drop down to 0.800 ppm.

6.3 **Product Warning Language.** Following the Compliance Date, the following Product Warning statement shall be used on any Covered Product authorized or offered for sale in the State of California which exceeds an applicable trigger as set forth in Section 6.2:

> **WARNING:** Consuming this product may expose you to chemicals including lead and cadmium, which are known to the State of California to cause [cancer and] birth defects or other reproductive harm. For further information go to www.p65warnings.ca.gov

The bracketed language in the preceding Product Warning statement may be deleted or included at a Settling Defendant's option.

6.4 **Method of Transmission for Product Warnings.**

6.4.1. **Labeling Requirement.** Where required pursuant to Sections 6.1 and 6.2, the Product Warning statement set forth in Section 6.3 shall be placed on a consumer Covered Product's labeling with such conspicuousness as compared with other words, statements, or designs on the labeling or packaging as to render it likely to be read and understood by an ordinary individual under customary conditions of use or purchase. The Product Warning statement shall be displayed in at least the same size as the largest of any other health or safety warnings or chemical or allergen disclosures on the Covered Product's label. The Product Warning statement shall be contained in the same section of the label that states other safety warnings or chemical/allergen disclosures about the Covered Product.

6.4.2. **Warning for a Settling Defendant's Internet Sales.** In addition to complying with the labeling requirement in subsection 6.4.1, Settling Defendants who maintain their own websites that sell Covered Products to a California consumer, must also provide Product Warnings, where required for a Covered Product under Sections 6.1 and 6.2, by

including either the Product Warning statement set forth in Section 6.3 or a clearly marked hyperlink using the word "WARNING" to such a Product Warning statement, either: (a) on the product display page for the Covered Product, (b) on the same page as serves as the order form for the Covered Product, (c) on the same page as where the price for the Covered Product is otherwise displayed; or (d) in a dialogue box that appears and is visible when a California address for delivery is provided by the consumer (but only if the dialogue box appears prior to the completion of the internet sale).

6.5 **Non-Consumer Chocolate Products.** The Product Warning requirements set forth in this Section 6 do not directly apply to commercial, non-consumer Chocolate Products that are intended to be used as ingredients in consumer products, as long as such products are not made available for sale directly to California consumers. However, Settling Defendants that manufacture, distribute or sell commercial, non-consumer Chocolate Products that do exceed the limits set forth in Section 6.2 shall advise their customers in writing at least annually that consumer products made with their commercial products may not be offered for sale in the State of California without the applicable warning as set forth in Section 6.3 and 6.4, unless the resulting consumer products do not exceed the limits as set forth in Sections 6.2.1 and 6.2.2.

6.6 Any changes to the language or format of the Product Warnings required under this Section 6 shall be made only after Court approval and following written notice to AYS and to the California Attorney General.

7. OPT-IN PROGRAM

7.1 This Consent Judgment is executed with the understanding that additional persons and entities who manufacture, distribute, sell, or offer for sale Chocolate Products in the State of California may wish to subscribe to the terms of this Consent Judgment. Each Opt-In Settling Defendant that has not already received a 60-Day Notice of Violation from AYS concerning the range of Chocolate Products it wishes to address through the Opt-In must be able to certify to the facts enumerated in Section 7.3.

7.2 At any time before one hundred eighty (180) days following the Effective Date, prospective Opt-In Settling Defendants who are willing to confirm the representations listed in

Section 7.3 may become Settling Defendants under this Consent Judgment by executing an Opt-In Stipulation as provided in Section 7.3 and tendering the applicable payment amounts, as set forth in Section 8. Each Opt-In Defendant that has not received a 60-day Notice of Violation from AYS for the Chocolate Products to be covered by this Consent Judgment shall cooperate with AYS in providing an evidentiary basis upon which AYS can complete a certificate of merit for the 60-day Notice of Violation, as required by Health and Safety Code section 25249.7(d)(1).

7.3 Each Opt-In Settling Defendant shall execute and deliver to AYS an Opt-In Stipulation in the general form appearing as **Exhibit B** hereto identifying whether the Opt-In Settling Defendant has manufactured, imported, distributed, sold, or offered for use and sale in the State of California Chocolate Products, and certifying to the following facts: (1) it employs ten or more persons; (2) it manufactured, imported, distributed, sold, or offered for use and sale in the State of California one or more specifically identified Chocolate Products without a "clear and reasonable" Proposition 65 warning during the preceding year; and (3) it knows or has reason to believe that one or more of the identified Chocolate Products has in the past contained or presently contains lead or cadmium in excess of at least one of the drop down levels set forth in Section 6.2.1 or 6.2.2.

7.4 Not later than ninety (90) days after AYS receives a completed Opt-In Stipulation for a prospective Opt-In Settling Defendant for which a 60-day Notice of Violation has not been issued, any additional information and representations necessary to support a 60-day Notice of Violation, and payment of the applicable payments required in Section 8, AYS shall serve a Notice of Violation pursuant to California Health and Safety Code section 25249.7(d) on the Opt-In Settling Defendant, to the California Attorney General, to every California District Attorney and every California city attorney required to receive such a notice pursuant to California Health and Safety Code section 25249.7.

7.5 No earlier than seventy (70) days from the date specified in the Notice of Violation sent to an Opt-In Settling Defendant, and provided that no authorized public prosecutor of Proposition 65 has filed an action against that Opt-In Settling Defendant for

alleged exposures to lead or cadmium in the Covered Products and is diligently prosecuting it, AYS shall file in this Court an application for entry of the executed Opt-In Stipulation that AYS has received pursuant to this Section 7 and shall serve notice thereof on all other Settling Defendants. If the Court approves the application for entry of the Opt-In Stipulation, the Complaint shall be deemed to have been amended to specifically name the Opt-In Settling Defendant that executed the Opt-In Stipulation as named defendants in this Action, and each such Opt-In Settling Defendant shall be deemed to be a full Settling Defendant under this Consent Judgment, with all applicable obligations and rights conferred by this Consent Judgment.

7.6 In the event that a public prosecutor is diligently prosecuting an Opt-In Settling Defendant's alleged Proposition 65 violation prior to the expiration of the 60-day notice period, AYS shall refund the full payment made by that Opt-In Settling Defendant and have no further obligation to that Opt-In Settling Defendant under this Section 7.

7.7 At the time AYS files the final application for entry of the Opt-In Stipulations with the Court pursuant to Section 7.5, it shall prepare and file with the Court and serve on the California Attorney General, an application for approval of the Opt-In Stipulations pursuant to Section 8.2. The application shall be supported by one or more declarations reporting the results of the opt-in program, including all expenses and attorneys' fees incurred by AYS's counsel with respect to the lead and cadmium enforcement process and opt-in process to date. In the event that the application demonstrates that the total amount of the expenses and attorneys' fees incurred by AYS is less than the total amount of reimbursement provided pursuant to Section 8.2, AYS shall within thirty (30) days disgorge any attorneys' fees and costs reimbursements in excess of its costs actually incurred in AYS's chocolate-related Proposition 65 matters to the Initial Settling Defendants as set forth in Section 8.2 below.

7.8 Opt-In Settling Defendants are subject to the timelines as set forth in Sections 5 and 6 of this Consent Judgment, without modification.

8. MONETARY RELIEF

8.1 For the purposes of this Section 8 regarding monetary relief, Settling Defendants shall fall into one of the following categories and provide certification of their qualifications therefore to AYS upon request:

8.1.1. Large Grinders/Wholesalers/Chocolate Ingredient Suppliers: Total annual U.S. sales of Covered Products of $500 Million or more

8.1.2. Medium Grinders/Wholesalers/Chocolate Ingredient Suppliers: Total annual U.S. sales of Covered Products in excess of $50 Million but less than $500 Million

8.1.3. Small Grinders/Wholesalers/Chocolate Ingredient Suppliers: Total annual U.S. sales of Covered Products of less than $50 Million

8.1.4. Not Otherwise Completely Released Large Candy Manufacturer: Total annual U.S. sales of Covered Products of $500 Million or more

8.1.5. Not Otherwise Completely Released Medium Candy Manufacturer: Total annual U.S. sales of Covered Products of $50 Million but less than $500 Million

8.1.6. Not Otherwise Completely Released Small Candy Manufacturer: Total annual U.S. sales of Covered Products of less than $50 Million

8.1.7. Large Retailer With Exposure Not Covered By a Downstream Release: Total annual U.S. sales of Covered Products not subject to downstream release of $100 Million or more

8.1.8. Small Retailer With Exposure Not Covered By a Downstream Release: Total annual U.S. sales of Covered Products not subject to downstream release of less than $100 Million.

8.2 **Fee Reimbursement.** Within thirty (30) days of the Effective Date, the Initial Settling Defendants, or an entity acting on their behalves, shall collectively reimburse AYS's attorneys' fees, investigative costs, and other reasonable litigation costs and expenses in the aggregate amount of $900,000. The individual amounts set forth in Sections 8.2.1 through 8.2.8 shall apply to the calculation of fee reimbursement payments for Opt-In Settling Defendants pursuant to Section 7 and shall be reimbursed to the Initial Settling Defendants by AYS within sixty (60) days of the Court's action on the application AYS must file pursuant to Section 7.7. AYS shall make this reimbursement through a lump sum payment to Morrison and Foerster Client Trust LLP (or an alternate designee of the Initial Settling Defendants), which will distribute the funds on a pro rata basis based on each Initial Settling Defendant's total payments

made under this Section 8.2 relative to all other Initial Settling Defendants' total payments made under this Section 8.2 or pursuant to such other allocation as has been agreed upon among the Initial Settling Defendants. In the event the amount provided to the Initial Settling Defendants under this Section 8.2 and Section 8.5 exceeds the fees and costs the Initial Settling Defendants have incurred with respect to this Consent Judgment, excluding any payments made under Sections 8.3, 8.4, or 8.6, but including the legal fees they have incurred in its development and approval and entry by the Court ("Settlement Related Costs"), the Initial Settling Defendants shall disgorge any such excess amount to the California Office of Environmental Health Hazard Assessment ("OEHHA").

8.2.1. Large Grinders/Wholesalers/Chocolate Ingredient Suppliers: $95,000

8.2.2. Medium Grinders/Wholesalers/Chocolate Ingredient Suppliers: $45,000

8.2.3. Small Grinders/Wholesalers/Chocolate Ingredient Suppliers: $20,000

8.2.4. Not Otherwise Completely Released Large Candy Manufacturer: $95,000

8.2.5. Not Otherwise Completely Released Medium Candy Manufacturer: $45,000

8.2.6. Not Otherwise Completely Released Small Candy Manufacturer: $20,000

8.2.7. Large Retailer With Exposure Not Covered By a Downstream Release: $12,500

8.2.8. Small Retailer With Exposure Not Covered By a Downstream Release: $10,000

8.3 **Civil Penalties.** Within thirty (30) days of the Effective Date, each Initial Settling Defendant, or an entity acting on their collective behalves, shall also make the following payments to AYS as civil penalties, pursuant to Health and Safety Code section 25249.7(b), as set forth in Sections 8.3.1 through 8.3.8. The individual amounts set forth in Sections 8.3.1 through 8.3.8 shall also apply to the calculation of payments for Opt-In Settling Defendants pursuant to Section 7. AYS shall remit 75% of the amount to the State of California pursuant to Health and Safety Code section 25249.12(b). Settling Defendants shall have no liability if payments to the State of California are not made by AYS.

8.3.1. Large Grinders/Wholesalers/Chocolate Ingredient Suppliers: $22,000

8.3.2. Medium Grinders/Wholesalers/Chocolate Ingredient Suppliers: $16,500

8.3.3. Small Grinders/Wholesalers/Chocolate Ingredient Suppliers: $11,000

8.3.4. Not Otherwise Completely Released Large Candy Manufacturer: $22,000

8.3.5. Not Otherwise Completely Released Medium Candy Manufacturer: $16,500

8.3.6. Not Otherwise Completely Released Small Candy Manufacturer: $11,000

8.3.7. Large Retailer With Exposure Not Covered By a Downstream Release: $16,500

8.3.8. Small Retailer With Exposure Not Covered By a Downstream Release: $11,000.

8.4 **Additional Settlement Payments In Lieu Of Penalties.** Additionally, within thirty (30) days of the Effective Date, each Initial Settling Defendant, or an entity acting on their collective behalves, shall make the following additional payments to AYS in lieu of additional civil penalties, as set forth in Sections 8.4.1 through 8.4.8. The individual amounts set forth in Sections 8.4.1 through 8.4.8 shall also apply to the calculation of payments for Opt-In Settling Defendants pursuant to Section 7. These additional settlement payments may be used by AYS for grants to California 501(c)(3) non-profit organizations and by AYS itself for research and educational purposes associated with reducing or remediating exposures to lead and cadmium contained in consumer products sold in California and/or to increase consumer awareness of the health hazards posed by these chemicals in consumer products sold in California and how such hazards may be mitigated, but may not be used by AYS or its grantees in support of litigation, or for public relations, directed at the Settling Defendants or their Covered Products. In deciding among grantee proposals, the AYS Board of Directors ("Board") takes into consideration a number of important factors, including: (1) the nexus between the harm posed by lead and cadmium in consumer products sold in California and the grant program work; (2) the potential for lead or cadmium reduction, prevention, mitigation, remediation, or education benefits to California citizens from the proposal; (3) the budget requirements of the proposed grantee and the alternate funding sources available to it for its project; and (4) the Board's assessment of the

grantee's chances for success in its program work. AYS shall ensure that all funds will be disbursed and used in accordance with this Section 8.4, as well as with AYS's mission statement, articles of incorporation, bylaws, and applicable state and federal laws and regulations. AYS shall obtain and maintain adequate records to document that the funds are spent on the activities described in this Section 8.4, and shall provide the Attorney General, within thirty (30) days of any request, copies of all documentation demonstrating how such funds have been spent. No party to this Consent Judgment, or counsel of record, or spouse or dependent child thereof, has an economic interest in any entity or individual, besides itself, that is designated in this paragraph to receive all or a party of any Additional Settlement Payments. The payments required under this Section 8.4 are as follows:

8.4.1. Large Grinders/Wholesalers/Chocolate Ingredient Suppliers: $3,875

8.4.2. Medium Grinders/Wholesalers/Chocolate Ingredient Suppliers: $2,125

8.4.3. Small Grinders/Wholesalers/Chocolate Ingredient Suppliers: $500

8.4.4. Not Otherwise Completely Released Large Candy Manufacturer: $3,875

8.4.5. Not Otherwise Completely Released Medium Candy Manufacturer: $2,125

8.4.6. Not Otherwise Completely Released Small Candy Manufacturer: $500

8.4.7. Large Retailer With Exposure Not Covered By a Downstream Release: $2,125

8.4.8. Small Retailer With Exposure Not Covered By a Downstream Release: $500.

8.5 **Payments to Fund Committee's Work.** Additionally, within thirty (30) days of the Effective Date, as contemplated in Section 3.3.2, the Initial Settling Defendants, or an entity acting on their behalves, shall collectively tender to AYS an aggregate amount of $500,000 to fund the Committee investigation. The individual amounts of payments set forth in Sections 8.5.1 through 8.5.8 shall apply to the calculation of payments towards the Committee's work for Opt-In Settling Defendants pursuant to Section 7. The first $100,000 of payments received by AYS from Opt-In Settling Defendants pursuant to this Section 8.5 will be used exclusively to fund the remaining expense, if any, associated with the Committee's investigation and final report pursuant to Section 3. Any portion of the $100,000 that is not required for the remaining

expense of the Committee shall be transferred to the Compliance Testing Fund established under Section 8.6. Any funds raised from Opt-In Settling Defendants pursuant to this Section 8.5 in excess of the $100,000 amount shall be paid to the Initial Settling Defendants by AYS within sixty (60) days of the Court's action on the application AYS must file pursuant to Section 7.7. AYS shall make this reimbursement through a lump sum payment to the Morrison and Foerster LLP Client Trust (or an alternate designees of the Initial Settling Defendants), which will distribute the funds on a pro rata basis based on each Initial Settling Defendant's total payments made under this Section 8.5 relative to all other Initial Settling Defendants' total payments made under this Section 8.5 or pursuant to such other allocation as has been agreed upon by the Initial Settling Defendants. If the funds raised from the Opt-In Settling Defendants under this Section 8.5 are not sufficient to generate the additional $100,000, the Initial Settling Defendants shall collectively tender the difference to AYS within one year of the Effective Date. The payments required by Opt-In Settling Defendants under this Section 8.5 shall be:

8.5.1. Large Grinders/Wholesalers/Chocolate Ingredient Suppliers: $77,500

8.5.2. Medium Grinders/Wholesalers/Chocolate Ingredient Suppliers: $35,000

8.5.3. Small Grinders/Wholesalers/Chocolate Ingredient Suppliers: $15,000

8.5.4. Not Otherwise Completely Released Large Candy Manufacturer: $77,500

8.5.5. Not Otherwise Completely Released Medium Candy Manufacturer: $35,000

8.5.6. Not Otherwise Completely Released Small Candy Manufacturer: $15,000

8.5.7. Large Retailer With Exposure Not Covered By a Downstream Release: $7,500

8.5.8. Small Retailer With Exposure Not Covered By a Downstream Release: $2,500.

8.6 **Payments to Fund Compliance Verification Testing and Oversight Program.** Additionally, within thirty (30) days of the Effective Date, each Initial Settling Defendant, or an entity acting on their collective behalves, shall make the following additional payments to AYS to provide seed funding for the compliance verification testing and oversight program set forth in Sections 5.2 to 5.5 ("Compliance Testing Fund"). The individual amounts of payments set

forth in Sections 8.6.1 through 8.6.8 shall also apply to the calculation of payments towards the compliance verification testing and oversight program for Opt-In Settling Defendants pursuant to Section 7. The payments received by AYS pursuant to this Section 8.6 shall be used exclusively to fund the compliance verification testing and oversight program described in Sections 5.2 through 5.5. The payments required under this Section 8.6 shall be:

8.6.1. Large Grinders/Wholesalers/Chocolate Ingredient Suppliers: $12,500

8.6.2. Medium Grinders/Wholesalers/Chocolate Ingredient Suppliers: $10,000

8.6.3. Small Grinders/Wholesalers/Chocolate Ingredient Suppliers: $7,500

8.6.4. Not Otherwise Completely Released Large Candy Manufacturer: $12,500

8.6.5. Not Otherwise Completely Released Medium Candy Manufacturer: $10,000

8.6.6. Not Otherwise Completely Released Small Candy Manufacturer: $7,500

8.6.7. Large Retailer With Exposure Not Covered By a Downstream Release: $10,000

8.6.8. Small Retailer With Exposure Not Covered By a Downstream Release: $7,500.

8.7 Initial Settling Defendants, or an entity acting on their collective behalves, shall issue all payments as required under this Section 8 with a check made payable to Shute, Mihaly & Weinberger LLP Client Trust Account and delivered to Ellison Folk, Shute, Mihaly & Weinberger LLP, 396 Hayes Street, San Francisco, CA 94102 or via wire or ACH electronic funds transfer if mutually arranged with Shute, Mihaly & Weinberger LLP in advance. Funds tendered by the Opt-In Defendants for purposes of Section 8.2 shall be provided along with the other documentation and payments required under Section 7.4 and maintained in the Shute, Mihaly & Weinberger LLP Client Trust Account until disbursed for fee and cost reimbursement approved by the Court or, if there is a surplus, until disbursed to the Initial Settling Defendants. Funds tendered for purposes of Section 8.5 shall be maintained in the Shute, Mihaly & Weinberger LLP Client Trust Account until disbursed for the Committee's expenses or, if there is a surplus, until disbursed to the Initial Settling Defendants.

8.8 Except as provided in Sections 5.5, 5.6, and 16.1, the payments made pursuant to this Section 8 shall be the only monetary obligation of Settling Defendants with respect to this Consent Judgment, including as to any fees, costs, or expenses AYS has incurred in relation to this Action.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

AYS agrees to comply with the reporting requirements referenced in California Health and Safety Code section 25249.7(f). Pursuant to the regulations promulgated under that section, AYS shall present this Consent Judgment to the California Attorney General's Office within two (2) days after receipt of all necessary Initial Settling Defendant signatures. The Parties acknowledge that, pursuant to Health and Safety Code section 25249.7, a noticed motion must be filed to obtain judicial approval of the Consent Judgment. Accordingly, a motion for approval of the Consent Judgment shall be prepared and filed by AYS within a reasonable period of time after the date this Consent Judgment is signed by all Parties.

10. MODIFICATION OF SETTLEMENT

This Consent Judgment may be modified by: (1) written agreement among the Parties and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of AYS or a Settling Defendant as provided by law and upon entry of a modified Consent Judgment by the Court thereon. All Parties and the California Attorney General's Office shall be served with notice of any proposed modification to this Consent Judgment in advance of its consideration by the Court.

11. APPLICATION OF CONSENT JUDGMENT

This Consent Judgment shall apply to and be binding upon AYS, acting in the public interest, and the Settling Defendants and the predecessors, successors or assigns of each of them.

12. CLAIMS COVERED/RELEASES

12.1 **Release of Settling Defendants.** This Consent Judgment is a full, final, and binding resolution between AYS, on behalf of itself and in the public interest, and the Settling Defendants, of any alleged violation of Proposition 65 for failure to provide Proposition 65 warnings of exposure to lead and/or cadmium in the Covered Products. AYS, on behalf of

itself, its affiliates, agents, officers, directors, representatives, attorneys, successors and/or assignees, and on behalf of the general public in the public interest, hereby releases and discharges: (a) Settling Defendants and their parent companies, subsidiaries, affiliates, and divisions; (b) their respective joint venturers and partners; and (c) each of the respective officers, directors, shareholders, employees, agents, and representatives of the persons and entities described in (a) and (b) (including the predecessors, successors and assigns of any of them, are collectively referred to as the "Released Parties") from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees (including but not limited to investigation fees, attorneys' fees, and expert fees), costs, and expenses (collectively, "Claims") as to any alleged violation of Proposition 65 arising from the failure to provide Proposition 65 warnings regarding alleged exposures to lead and/or cadmium in the Chocolate Products manufactured, imported distributed, or sold before the Effective Date.

12.2 **Settling Defendants' Waiver and Release of Plaintiff.** Settling Defendants, on behalf of themselves and their affiliates, agents, officers, directors, representatives, attorneys, successors and/or assignees, hereby release AYS and its affiliates, agents, officers, directors, representatives, attorneys, successors and/or assignees from and waive any claims against AYS for injunctive relief or damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed or which could have been claimed for matters related to the Notices or Complaint[s].

12.3 **Effect of Judgment.** From the Effective Date forward, compliance with the terms of this Consent Judgment shall be deemed to constitute compliance by any Settling Defendant or Released Party with Proposition 65 regarding alleged exposures to lead and/or cadmium in the Covered Products.

12.4 **Downstream Release.** A distributor, wholesaler, retailer, customer, user, or other entity that is downstream in the chain of commerce from a Settling Defendant or Released Party ("Downstream Entity") shall be released from any liability under Proposition 65 as to the lead or cadmium contribution from the cocoa-based ingredients or chocolate in a Covered Product provided that the cocoa-based ingredients or chocolate in the Covered Product contains

concentrations of lead and cadmium at or below the applicable warning trigger levels set forth in Section 6.2.1 and 6.6.2. This release to Downstream Entities does not extend to the cocoa-based ingredients or chocolate used in the protein bar and nutritional drink products whose names appear on **Exhibit D.**

12.5 Nothing in this Section 12 shall affect or limit any Party's right to seek to enforce the terms of this Consent Judgment.

13. RETENTION OF JURISDICTION

This Court shall retain jurisdiction of this matter to implement this Consent Judgment.

14. COURT APPROVAL

If this Consent Judgment is not approved by this Court, it shall be of no force or effect and cannot be used in any proceeding for any purpose.

15. DURATION OF CONSENT JUDGMENT

15.1 At any time after the seventh anniversary of the Effective Date, any Party may move for the Court to terminate the Consent Judgment for good cause shown and any Party may oppose such motion.

15.2 At least six (6) months prior to bringing a motion to terminate pursuant to Section 15.1, a Party shall first offer to meet and confer with all other Parties concerning the basis on which they intend to seek termination and set forth its position as to: (a) how Section 6 of this Consent Judgment could be modified to address their position, and (b) why such modifications and the means to achieve them have become Feasible or why Feasible technologies or methods have not become available or proven Feasible. To the extent that the meet and confer does not result in a stipulated modification of the Consent Judgment being submitted to the Court for approval pursuant to Section 10 within three (3) months after a Party gives notice of its intention to bring a motion for termination, the Party or Parties which elect to oppose the proposed motion for termination may seek to have the matter referred to a mutually acceptable mediator, to be paid for at its or their sole expense, who shall be given another three (3) months to attempt to resolve the matter in a manner that allows the Consent Judgment to remain in effect by mutual agreement.

15.3 The Committee's findings concerning Feasible measures or limits shall be admissible but not be dispositive for purposes of this Section 15.

15.4 The meet and confer and potential mediation deadlines specified under Section 15.2 may be modified in writing by the Parties pursuant to Section 10.

16. ENFORCEMENT

16.1 In the event that a dispute arises with respect to any provisions of this Consent Judgment, the respective Parties shall meet and confer within thirty (30) days of receiving written notice of the alleged violation. In the event that the respective Parties are unable to resolve their dispute through the meet and confer process, this Consent Judgment may be enforced using any available provision of law. If AYS is the prevailing Party in any dispute regarding compliance with the terms of this Consent Judgment, it may seek any fines, costs, penalties, or remedies provided by law for failure to comply with California Health and Safety Code sections 25249.5, et seq. A prevailing Party in such a dispute regarding compliance with the terms of this Consent Judgment is entitled to seek recovery of its reasonable attorneys' fees and costs incurred in any such motion or proceeding pursuant to the provisions of Code of Civil Procedure section 1021.5. Notwithstanding any language to the contrary in Sections 3, 5, or otherwise herein, AYS may disclose test results received from a Settling Defendant in a court filing in support of any motion to enforce this Consent Judgment provided that AYS first provides the Settling Defendant an opportunity to make a motion for leave to seal such data pursuant to a protective order.

16.2 In the event that a Settling Defendant misses any deadline required under this Consent Judgment for the submission of reports, testing, or of any other notifications to AYS, the Settling Defendant shall nonetheless be deemed to be in compliance with such a deadline if it submits the required information or notification to AYS within fourteen days of discovering the missed deadline. If AYS brings a missed deadline to the attention of a Settling Defendant, such Settling Defendant shall pay penalties to AYS in the amount of up to $5,000 per incident as may be reasonably requested by AYS given the nature of the deadline and materiality of the

timeliness of the information involved. All missed deadlines within a calendar quarter shall be deemed to constitute a single "incident."

17. GOVERNING LAW

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

18. EXCHANGE IN COUNTERPARTS

Stipulations to this Consent Judgment may be executed in counterparts (and, without limitation, by facsimile or by electronic mail in "portable document format" (".pdf"), each of which shall be deemed an original, and all of which, when taken together, shall be deemed to constitute one and the same instrument.

19. NOTICES

All correspondence and notices required to be provided by a Party to the other Parties pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (a) first-class, registered mail, certified return receipt requested, or (b) by overnight or Two Day courier at the addresses set forth below. AYS or the Settling Defendants may specify in writing to the other Parties a change of address to which all notices and other communications shall be sent.

Whenever notice or a document is required to be sent to AYS, it shall be sent to:

Danielle Fugere
President
As You Sow
1611 Telegraph Ave, Suite 1450
Oakland, CA 94612

and

Ellison Folk
Shute, Mihaley & Weinberger LLP
396 Hayes Street
San Francisco, CA 94104

Whenever notice or a document is required to be sent to a Settling Defendant, it shall be sent to the contact name(s) and address(es) identified in **Exhibit E**, which shall also be completed and appended to each Opt-In Stipulation submitted pursuant to Section 7.3.

20. SEVERABILITY

If, subsequent to court approval of this Consent Judgment, any of the provisions of this Consent Judgment are held by a court to be unenforceable or preempted, the validity of the enforceable provisions remaining shall not be adversely affected.

21. ENTIRE AGREEMENT

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

22. AUTHORIZATION TO ENTER INTO AGREEMENT

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

DATED: 12/4/17

AS YOU SOW

Andrew Behar, CEO

DATED: _____

BARRY CALLEBAUT U.S.A., LLC

Name: _____

Title: _____

20. SEVERABILITY

If, subsequent to court approval of this Consent Judgment, any of the provisions of this Consent Judgment are held by a court to be unenforceable or preempted, the validity of the enforceable provisions remaining shall not be adversely affected.

21. ENTIRE AGREEMENT

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

22. AUTHORIZATION TO ENTER INTO AGREEMENT

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

DATED: _____

AS YOU SOW

_____

Andrew Behar, CEO

DATED: 12/6/2017

BARRY CALLEBAUT U.S.A., LLC

_____

Name: JAMES D. HAGEDORN

Title: EVP

DATED: 12/8/17

BLOMMER CHOCOLATE CO.

Name: PETER W. BLOMMER
Title: CEO

DATED: _____

GUITTARD CHOCOLATE CO.

Name: _____
Title: _____

DATED: _____

THE HERSHEY COMPANY

Name: _____
Title: _____

DATED: _____

LINDT & SPRUNGLI (NORTH AMERICA), INC.

Name: _____
Title: _____

DATED: _____

BLOMMER CHOCOLATE CO.

_____

Name: _____
Title: _____

DATED: 12/6/17

GUITTARD CHOCOLATE CO.

_____

Name: GARY W. GUITTARD
Title: CEO

DATED: _____

THE HERSHEY COMPANY

_____

Name: _____
Title: _____

DATED: _____

LINDT & SPRUNGLI (NORTH AMERICA), INC.

_____

Name: _____
Title: _____

DATED: _____

BLOMMER CHOCOLATE CO.

_____

Name: _____
Title: _____

DATED: _____

GUITTARD CHOCOLATE CO.

_____

Name: _____
Title: _____

DATED: 11-30-2017

THE HERSHEY COMPANY

_____

Name: Adrian D. Mebane
Title: Assistant Secretary

DATED: _____

LINDT & SPRUNGLI (NORTH AMERICA), INC.

_____

Name: _____
Title: _____

DATED: _____

BLOMMER CHOCOLATE CO.

_____

Name: _____
Title: _____

DATED: _____

GUITTARD CHOCOLATE CO.

_____

Name: _____
Title: _____

DATED: _____

THE HERSHEY COMPANY

_____

Name: _____
Title: _____

DATED: 11/30/2017

LINDT & SPRUNGLI (NORTH AMERICA) INC.

_____

Name: Andreas Pflugar
Title: President

DATED: 12-7-17

CARGILL, INC., on behalf of itself, its affiliates, and subsidiaries

Name: Horacio Gutierrez

Title: President, Managing Director of Cargill Cocoa and Chocolate

DATED: _____

MARS, INC.

Name: _____

Title: _____

DATED: _____

MONDELEZ GLOBAL LLC, as the United States operating company for MONDELEZ INTERNATIONAL, INC.

Name: _____

Title: _____

DATED: _____

NESTLÉ USA, INC.

Name: _____

Title: _____

DATED: _____

CARGILL, INC., on behalf of itself, its affiliates, and subsidiaries

_____

Name: _____

Title: _____

DATED: 12-08-17

MARS, INC.

_____

Name: SHAUGHAN M KENNEDY

Title: VP RESEARCH AND DEVELOPMENT

DATED: _____

MONDELEZ GLOBAL LLC, as the United States operating company for MONDELEZ INTERNATIONAL, INC.

_____

Name: _____

Title: _____

DATED: _____

NESTLÉ USA, INC.

_____

Name: _____

Title: _____

DATED: _____

CARGILL, INC., on behalf of itself, its affiliates, and subsidiaries

_____

Name: _____
Title: _____

DATED: _____

MARS, INC.

_____

Name: _____
Title: _____

DATED: 12/6/17

MONDELEZ GLOBAL LLC, as the United States operating company for MONDELEZ INTERNATIONAL, INC.

Valerie Oswalt

Name: Valerie Oswalt
Title: President NA Confections

DATED: _____

NESTLÉ USA, INC.

_____

Name: _____
Title: _____

DATED: _____

CARGILL, INC., on behalf of itself, its affiliates, and subsidiaries

_____

Name: _____

Title: _____

DATED: _____

MARS, INC.

_____

Name: _____

Title: _____

DATED: _____

MONDELEZ GLOBAL LLC, as the United States operating company for MONDELEZ INTERNATIONAL, INC.

_____

Name: _____

Title: _____

DATED: 12-5-2017

NESTLÉ USA, INC.

_____

Name: Daniel Nugent

Title: Chief Legal Officer + General Counsel

JC

EXHIBIT A

Initial Settling Defendants

Barry Callebaut USA, LLC

Blommer Chocolate Co.

Cargill, Inc.
(on behalf of itself, its affiliates, and subsidiaries)

Guittard Chocolate Co.

The Hershey Company

Lindt & Sprüngli (North America) Inc.
(on behalf of itself, its affiliates, and its subsidiaries, including Lindt & Sprüngli (USA) Inc., the Ghirardelli Chocolate Company, and Russell Stover Chocolates, LLC)

Mars Incorporated

Mondelez Global LLC
(as the United States operating company for Mondelez International, Inc.)

Nestlé USA, Inc.

EXHIBIT B

Opt-In Stipulation

ELLISON FOLK (State Bar No. 149232)
LAURA D. BEATON (State Bar No. 294466)
SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
San Francisco, California 94102
Telephone: (415) 552-7272
Facsimile: (415) 552-5816
Folk@smwlaw.com
Beaton@smwlaw.com

Attorneys for AS YOU SOW

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

AS YOU SOW, Plaintiff, v. TRADER JOES COMPANY; and DOES 1 through 150, Defendants.	Case No. CGC-15-548791 **STIPULATION FOR ENTRY OF JUDGMENT**

1. The following constitutes the knowing and voluntary election and stipulation of the entity named below ("Company" or "Opt-In Defendant") to join as a Settling Defendant under the Consent Judgment previously entered by the Court in *As You Sow v. Trader Joe's Company, et al.*, San Francisco Superior Court Case No. CGC-15-548791 ("Action") and to be bound by the terms of that "Consent Judgment."

2. At any time during the three (3)-year period prior to the filing of this Stipulation ("Relevant Period"), the Company has employed ten or more persons on a full or part time basis and manufactured, distributed, or offered for use or sale in California, or sold in California, one or more Covered Products, as defined in the Consent Judgment Section 2.4.

3. Based on information and good faith belief, the Company knows or has reason to believe that one or more of its Covered Products has in the past contained or presently may contain lead or cadmium in excess of an applicable drop down level set forth in Section 6.2.1 or 6.2.2 of the Consent Judgment.

4. The Company has not provided Proposition 65 warnings in conjunction with the sale or use of its Covered Products in California at all times during the Relevant Period.

5. The Company agrees to be bound by all terms of the Consent Judgment, including, but not limited to, the injunctive relief provisions set forth in Section 6 of the Consent Judgment.

6. In conjunction with the execution of this Stipulation, the Company had provided the payments required of it under the Consent Judgment and shall make all future payments that may apply to the Company.

7. At least 70 days prior to the submissions of this Stipulation to the Court for entry, provided that it has been mailed to the address for notice shown in Exhibit E of the Consent Judgment, a completed copy of which is attached to this Stipulation, the Company agrees to be deemed to have accepted service of a 60-day notice letter from As You Sow ("AYS") alleging certain violations of Proposition 65 with respect to sales of the Covered Products.

8. The Company hereby stipulates to be deemed to have voluntarily accepted service of the summons and complaint in this Action upon the filing of this Stipulation and, without waiving its rights to contest the issue in any other action, agrees to be subject to the jurisdiction of the Court for purposes of the Consent Judgment.

9. The undersigned have read, and the person and/or entity named below knowingly and voluntarily agree to be bound by, all terms and conditions of this Stipulation and the Consent Judgment as it was previously approved and entered by the San Francisco County Superior Court in this Action.

10. The undersigned has full authority to make the written representations above and to enter into this Stipulation for the person/entity on behalf of which he/she is signing.

IT IS HEREBY STIPULATED AND AGREED TO:

On Behalf of Opt-In Defendant:

Date:_____

By: _____
(signature)

_____
Name (printed/typed)

_____
Title (printed/typed)

_____
Company Name (printed/typed)

On Behalf of Plaintiff, As You Sow:

Date:_____

By:_____
(signature and title)

EXHIBIT C

Scope of Work – Chocolate Consent Judgment[1]

I. Phases of Investigation and Committee Work

A. Phase 1: Scope of Root Cause

The Root Cause Phase of the investigation is intended to identify any potential sources of lead and cadmium in chocolate across all phases of the cacao and Chocolate Products process and supply chains. For each source that the Committee identifies, the Committee should also identify the likelihood that each source would contribute lead or cadmium to chocolate (e.g., "common source," "infrequent source," "rare source," etc.). The Committee's conclusions may be based on literature review; consultation with subject matter experts and chocolate industry personnel; testing for lead/cadmium in soil, water, beans, ingredients, equipment, packaging, tools, etc.; and any information the Committee deems relevant and reliable. The Committee should evaluate all of the following as potential sources of lead/cadmium contamination in chocolate:

1. Soil;

2. Water;

3. Potential lead or cadmium pollution sources proximate to significant cocoa growing or processing locations (such as smelters, incinerators, diesel traffic), or other historic or less proximate sources (such as prior use of leaded gasoline, or deposition patterns from other sources of pollution);

4. Cacao plant fertilization, pest, disease and weed control practice and materials; and irrigation sources and practices;

5. Cacao bean harvesting, fermentation, drying, and transportation practices and materials, including but not limited to:

    a. harvesting tools;

    b. bean transportation vessels, such as sacks, tarps, baskets, and buckets;

    c. open-air drying and open-air transport of cocoa beans; and

    d. fermentation tarps, racks, cloths, or other materials that come into contact with beans.

6. Cocoa bean processing and chocolate manufacturing practices that may introduce lead or cadmium, including but not limited to:

[1] All defined terms as used herein shall have the meaning assigned to them in the Consent Judgment. A glossary of such terms is provided in Attachment 1.

a. processing water;

b. sugar or other inclusions;

c. factory conveyance implements;

d. other factory equipment, such as roasters, winnowers, crushers, melangers, grinders, blenders, melters, molds, etc.;

e. product packaging.

The Committee's investigation is not limited to these potential sources. If the Committee identifies other potential sources of lead/cadmium in cocoa beans or Chocolate Products, it shall evaluate whether each additional potential source is a contributor of lead or cadmium, and what that source's likelihood and significance of contribution is.

B. Phase 2: Scope of Reduction Recommendations

After identifying the likely sources of lead/cadmium in cocoa beans and Chocolate Products, the Committee will identify Feasible methods for reducing lead/cadmium in the Chocolate Products. As with the Root Cause Phase of the investigation, the Committee's recommendations will be Consensus Based and result from the Root Cause Phase as well as further literature review, consultation with outside subject matter experts, review of test results, and any other information the Committee deems relevant and reliable.

The Committee should evaluate lead/cadmium reduction options for all of the following phases of the cocoa bean and Chocolate Product production and supply chain. Then, it should identify which reduction measures are Feasible at each phase of the production process.

1. Growing cacao, harvesting and fermentation of cocoa beans -- Some options for potential evaluation may include soil remediation, testing irrigation water and avoiding contaminated water, soil amendments to reduce heavy metal uptake, growing different varieties of cacao that uptake less heavy metals, changing fertilizers and pesticides/herbicides, etc.;

2. Storage and transport of fermented cocoa beans -- Some options for potential evaluation may include changing storage and transportation implements; avoiding open-air drying near roads and other sources of pollution, etc.;

3. Cacao bean processing and chocolate manufacturing -- Some options for potential evaluation may include comprehensive testing of a manufacturer's equipment, replacing outdated equipment, substituting non-cacao ingredients, blending beans to lower lead/cadmium levels, implementing processes that extract lead/cadmium from the cacao beans or chocolate, and/or modifying product packaging.

If the Committee believes other options may prove Feasible, it should evaluate those options as well.

C. Phase 3: Evaluation of Future Proposition 65 Warning Triggers

The Committee shall evaluate whether the levels to trigger warnings shall be modified from the "drop down" levels described in Sections 6.2.1 and 6.2.2 of the Consent Judgement. The Committee shall make recommendations in this regard based on:

1. The identification of Feasible reduction methods (Phase 2) that could reasonably lower levels of lead and cadmium in Chocolate Products below the drop down levels to trigger warnings.

2. The inability to identify Feasible reduction methods (Phase 2) that could reasonably lower levels of lead and cadmium in Chocolate Products below the drop down levels to trigger warnings.

3. The conclusion that the drop down levels to trigger warnings are not Feasible to achieve and an identification of the levels between the drop down levels and the initial levels which are Feasible.

In the event the Committee determines that levels other than the specified drop down levels are appropriate and can be achieved through Feasible measures, the Committee shall specify what those levels are, when the levels of lead and/or cadmium in Chocolate Products can be expected to be reduced, and by whom.

As with the first two phases of the Scope of Work, the Committee's recommendations shall be Consensus Based and be based on literature review, consultation with outside subject matter experts, review of test results, and any other information the Committee deems relevant and reliable.

D. Final Report Phase

The Committee shall prepare a final, written report to describe and explain its findings, conclusions, and recommendations for all three phases of its investigation. The final report shall include supporting references with complete citations for the Committee's conclusions and identify any SMEs who advised the Committee during its deliberations. The final report shall not be edited by any persons other than the members of the Committee. The final report shall present all Consensus Based Committee findings and recommendations and may include an appendix setting forth significant areas where consensus could not be achieved and an appendix setting forth any significant conflicting opinions on aspects of a Consensus Based finding where they exist.

II. Deliverables and Schedule

1. Based on a schedule developed by the Project Manager, the Committee members will commit to standing meetings (by phone conference) on a periodic basis or on an as needed basis to ensure coordination and the efficient sharing of information. The Project Manager shall develop a working agenda for each meeting and provide the Committee members with a brief written summary highlighting the discussion points and action items.

2. After the investigative portion of each of the first three phases of the Scope of Work is complete (as agreed upon by the Committee members), an outline of the findings,

conclusions, and recommendations shall be produced by the Committee and Project Manager for each investigative phase. These interim documents will be used to assist in internal discussions of the Committee and will form the basis of the final report.

3. The Committee and the Project Manager, in providing quarterly reports as required under the Consent Judgment, will produce a list of all outside SMEs consulted with and a brief description of the information gathered.

4. The Committee will produce an alphabetized list of all information sources with complete citations, including Internet URLs when available, to be included in the final report appendix.

5. Following submission of the final report, the Committee may be asked to present an oral summary of its main findings, conclusions, and recommendations (including any alternative conclusions and recommendations by any Committee members) as deemed desirable by the Initial Settling Defendants and/or As You Sow.

6. The Committee, with the approval of the Initial Settling Defendants and As You Sow, may elect to prepare the final report for submission to an appropriate trade journal for public access. The Committee shall agree not to pursue this publication until all of its work as outlined in the Scope of Work and the final report has been submitted.

Unless otherwise agreed upon by the Initial Settling Defendants and AYS, the final report shall be delivered by the Committee through the Project Manager within 18 to 24 months of the kickoff meeting that will be held pursuant to Section 3.2.2 of the Consent Judgment.

III. Cost/Budget

Unless revisited by AYS and the Initial Settling Defendants, all work and deliverables set forth in this Scope of Work shall be completed at a cost of $90,000 for each Committee member plus some funds to set aside for a part time Project Manager and possible outside expert consultation, up to an aggregate cap of $500,000.

IV. Confidentiality

All work by the Committee members and the Project Manager shall be subject to the confidentiality provisions set forth in Sections 3.3.3 and 3.4.4 of the Consent Judgment.

ATTACHMENT 1 to EXHIBIT C—GLOSSARY OF DEFINED TERMS

"**Chocolate Product**" means chocolate candy; chocolate bars, pieces, chips, beverages, and confections with or without inclusions; cocoa nibs and cocoa powder; chocolate and cacao-based compounds in any form; and other products derived primarily (i.e., in excess of 50%) from cacao. Chocolate Products include the preceding as sold on a standalone basis and/or as sold to be used as ingredients in other foods into which they are incorporated.

"**Consensus Basis**" means a creative and dynamic way of reaching agreement between all members of a group. Instead of simply voting for an item and having the majority of the group dictate the outcome, a group using consensus is committed to finding solutions that each member of the group actively supports, or at least can live with and that all opinions, ideas and concerns are taken into account. A Consensus Basis does not reflect compromise or unanimity - it aims to go further by weaving together everyone's best ideas and key concerns. It is an acceptable resolution, one that can be supported, even if not the "favorite" of each individual. Multiple concerns and information shall be shared until the sense of the group is clear. Ideas and solutions belong to the group; no names are recorded. The group as a whole is responsible for the decision and the decision belongs to the group. The goal is unity, not unanimity.

"**Feasible**" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account public health, and economic, environmental, social, and technological factors. In considering whether an action or performance level is Feasible, consideration shall be given, among other things, to scaling as to the size and resources of the potential implementing enterprise involved, the implementing enterprise's place and role within the chain of commerce, the prior demonstration of the viability of the concept or technology at issue at both the research and actual commercial application scale, and the nature of the issue being addressed.

"**Settling Defendant**" means a defendant who is a party to the Consent Judgment at the time it is entered, or who opts in to the Consent Judgment any time after its entry. The former are also specifically referred to herein as "Initial Settling Defendants" and the latter are also specifically referred to herein as "Opt-In Settling Defendants."

EXHIBIT D*

(= as revised by the Parties on January 31, 2018 to address a clarification request received from the Office of the California Attorney General concerning the preservation of both plaintiffs' and defendants' potential rights with regard to future litigation about certain prior claims and court-approved settlements/judgments)*

Products Not Subject to Section 12.4 Downstream Release:

1. All nutritional, protein, diet or meal replacement/energy bars (hereinafter "Protein Bars") containing cocoa-based ingredients or chocolate which were the subject of a 60-day notice of violation issued or complaint filed by AYS pursuant to Health and Safety Code Section 25249.7(d) on or before to December 4, 2017 alleging violations of Proposition 65 with respect to a failure to warn about lead or cadmium;

2. All nutritional, protein, diet or meal replacement drinks/shakes/drink mixes (prepared or dried) (hereinafter "Nutritional Drinks") containing cocoa-based ingredients or chocolate which were the subject of a 60-day notice of violation issued or complaint filed by AYS pursuant to Health and Safety Code Section 25249.7(d) on or before December 4, 2017 alleging violations of Proposition 65 with respect to a failure to warn about lead or cadmium;

3. All Protein Bars containing cocoa-based ingredients or chocolate which are the subject of a settlement or consent judgment resolving alleged violations of Proposition 65 with respect to a failure to warn about lead or cadmium as approved by a court pursuant to Health and Safety Code Section 25249.7(f) prior to the Effective Date;

4. All Nutritional Drinks containing cocoa-based ingredients or chocolate which are the subject of a settlement or consent judgment resolving alleged violations of Proposition 65 with respect to a failure to warn about lead or cadmium as approved by a court pursuant to Health and Safety Code Section 25249.7(f) prior to the Effective Date.

EXHIBIT E

Designees to Receive Notices Under Consent Judgment

Company Name: Barry Callebaut U.S.A. LLC

Attention of: James G. Hagedorn
Address: 600 West Chicago Avenue
Suite 860
Chicago, IL 60654
Telephone: 312.496.7312
Email: jerry_hagedorn@barry-callebaut.com

(Optional) with a CC to:
Name: Philipp M. Muheim
(legal counsel or other designee)
Firm/Company: Barry Callebaut U.S.A. LLC
Address: 600 West Chicago Avenue
Suite 860
Chicago, IL 60654
Telephone: 312.496.7435
Email: philipp_muheim@barry-callebaut.com

EXHIBIT E

Designees to Receive Notices Under Consent Judgment

Company Name: Blommer Chocolate Company

Attention of: Peter Blommer
Address: 1101 Blommer Drive
P.O. Box 45
East Greenville PA 18041-0045

Telephone: (215) 679-4472
Email: pblommer@eg.blommer.com _

(Optional) with a CC to:
Name: Allen C. Schlinsog, Jr.
Firm/Company: Reinhart Boerner Van Deuren s.c.
Address: 1000 North Water Street
P.O. Box. 2965
Milwaukee, WI 53201-2965

Telephone: (414)298-8214
Email: aschlinsog@reinhartlaw.com

EXHIBIT E

Designees to Receive Notices Under Consent Judgment

Company Name: Cargill, Incorporated

Attention of: Managing Director, Cargill Cocoa and Chocolate North America
Address: 15407 McGinty Road West, MS 36
Wayzata, MN 55391
Telephone: (952) 984-5206
Email: Florian_Girthofer@Cargill.com

(Optional) with a CC to:
Name: Cargill, Incorporated

Firm/Company: Attn: Law Department, Cocoa and Chocolate North America Lawyer
Address: 15407 McGinty Road West, MS 24
Wayzata, MN 55391

Telephone: (952) 742-0316
Email: Kelly_McLain@Cargill.com

EXHIBIT E

Designees to Receive Notices Under Consent Judgment

Company Name: Guittard Chocolate

Attention of: Gary Guittard
Address: 10 Guittard Rd.
Burlingame CA. 94010

Telephone: 650-697-4427
Email: gary@guittard.com

(Optional) with a CC to:
Name: Robert Falk
(legal counsel or other designee)
Firm/Company: Morrison + Foerster LLP
Address: 425 Market St.
SF Ca 94105

Telephone: 415-268-6294
Email: RFalk@mofo.com

EXHIBIT E

Designees to Receive Notices Under Consent Judgment

Company Name: The Hershey Company

Attention of: Hershey Legal Department
Address: 100 Crystal A Drive
Hershey, PA 17033

Telephone: 717-534-4200
Email: legalnotices@hersheys.com

(Optional) with a CC to:
Name: Robert Falk
(legal counsel or other designee)
Firm/Company: Morrison & Foerster, LLP
Address: 425 Market Street
San Francisco, CA 94105

Telephone: 415-268-6294
Email: RFalk@mofo.com

EXHIBIT E

Designees to Receive Notices Under Consent Judgment

Company Name: Lindt & Sprüngli (North America) Inc.

Attention of: Simon Kehl
Address: 4900 Oak Street
Kansas City, MO 64112, USA

Telephone: +1.816.855.2224
Email: sikehl@lindt.com

(Optional) with a CC to:
Name: Chris Locke

Firm/Company: Farella Braun + Martel LLP
Address: Russ Building
235 Montgomery Street
San Francisco, CA 94104
Telephone: 415.954.4486
Email: clocke@fbm.com

EXHIBIT E

Designees to Receive Notices Under Consent Judgment

Company Name: Mars Wrigley Confectionery US, LLC

Attention of: Shaughan Kennedy
Address: 1132 W. Blackhawk St.
Chicago, IL 60642

Telephone: (312) 241-5102
Email: Shaughan.kennedy@effem.com

(Optional) with a CC to:
Name: Katherine Fitzpatrick
(legal counsel or other designee)
Firm/Company: Mars Wrigley Confectionery US, LLC
Address: 600 W. Chicago
Suite 500
Chicago, IL 60654
Telephone: (312) 794-6245
Email: Katherine.Fitzpatrick@effem.com

EXHIBIT E

Designees to Receive Notices Under Consent Judgment

Company Name:	Mondelēz Global LLC, as the United States operating company for Mondelēz International, Inc.
Attention of:	Ellen M. Smith, VP & Chief Legal Counsel–North America
Address:	Mondelēz Global LLC 100 DeForest Avenue East Hanover, NJ 07936
Telephone:	(973) 503-2023
Email:	ellen.smith@mdlz.com

(Optional) with a CC to:

Name:	Trenton H. Norris; Sarah Esmaili (legal counsel or other designee)
Firm/Company:	Arnold & Porter Kaye Scholer LLP
Address:	3 Embarcadero Center, Suite 1000 San Francisco, CA 94111
Telephone:	(415) 471-3100
Email:	trent.norris@aporter.com sarah.esmaili@aporter.com

EXHIBIT E

Designees to Receive Notices Under Consent Judgment

Company Name: Nestle USA, Inc.

Attention of: Chief Legal Officer + General Counsel
Address: 1812 N. Moore Street
Arlington, VA 22209

Telephone: 818-331-6397
Email: Daniel.Nugent@us.nestle.com

(Optional) with a CC to:
Name: Doug Besman
(legal counsel or other designee)
Firm/Company: Nestlé USA, Inc. -Legal Dept.
Address: 30003 Bainbridge Rd.
Solon, OH 44139

Telephone: 440/264-5191
Email: Douglas.besman@us.nestle.com