

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1501  
(03/01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

**REPORT OF SETTLEMENT**

Please print or type required information

Original Filing     Supplemental Filing     Corrected Filing

<b>PARTIES TO THE ACTION</b>	PLAINTIFF(S) ENVIRONMENTAL LAW FOUNDATION, INDIVIDUALLY AND ON BEHALF OF THE GENERAL PUBLIC,		
	DEFENDANT(S) INVOLVED IN SETTLEMENT ANDRONICO'S MARKETS, INC.		
<b>CASE INFO</b>	COURT DOCKET NUMBER CGC-03-421108	COURT NAME SAN FRANCISCO SUPERIOR COURT	
	SHORT CASE NAME IN RE VINEGAR LITIGATION		
<b>REPORT INFO</b>	INJUNCTIVE RELIEF Proposition 65 Warnings, Shelf Warning and/or Product labeling		
	PAYMENT: CIVIL PENALTY - 0 -	PAYMENT: ATTORNEYS FEES \$40,000	PAYMENT: OTHER - 0 -
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL	DATE SETTLEMENT SIGNED 11 / 08 / 2005
	COPY OF SETTLEMENT MUST BE ATTACHED		
<b>FILER INFO</b>	NAME OF CONTACT ALAN M. CAPLAN, ESQ.		
	ORGANIZATION BUSHNELL, CAPLAN & FIELDING, LLP		TELEPHONE NUMBER ((415)) 217-3800
	ADDRESS 221 PINE STREET, SUITE 600		FAX NUMBER ((415)) 217-3820
	CITY SAN FRANCISCO	STATE    ZIP CA    94104-2715	E-MAIL ADDRESS ACAPBCF@AOL.COM

**FILING INSTRUCTIONS:** This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

1 ALAN M. CAPLAN (SBN 49315)  
2 APRIL M. STRAUSS, Of Counsel (SBN 163327)  
3 BUSHNELL, CAPLAN & FIELDING, LLP  
4 221 Pine Street, Suite 600  
5 San Francisco, CA 94104  
6 Telephone: (415) 217-3800  
7 Facsimile: (415) 217-3820

8 Attorneys for Plaintiff ENVIRONMENTAL LAW FOUNDATION  
9 *(Additional Attorneys on Signature Page)*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO, UNLIMITED JURISDICTION

IN RE VINEGAR LITIGATION

CASE NO. CGC-03-421108  
(consolidated with Nos. CGC-04-428945  
and CGC-04-435440)

CONSENT JUDGMENT AS TO  
DEFENDANT ANDRONICO'S  
MARKETS, INC.; ORDER

1. INTRODUCTION

1.1 October 13, 2004, the Environmental Law Foundation, individually and on behalf of the general public (“ELF”) filed a Complaint for civil penalties, restitution and injunctive relief (“Complaint”) in San Francisco County Superior Court (“Action”). Andronico’s Markets, Inc. (“Andronico’s”), one of the defendants in the Action, shall hereinafter be referred to as “Settling Defendant.”

1.2 Settling Defendant is a corporation that employs more than ten persons and sells Wine Vinegars to persons in the State of California. For purposes of this Consent Judgment, the term “Wine Vinegar” shall have the meaning set forth in section 6.2.

1.3 ELF’s Complaint alleges that the Settling Defendant manufactured, distributed and/or sold Wine Vinegar containing lead in an amount that resulted in an exposure to consumers in violation of the provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986 and Health & Safety Code §§ 25249.5, *et seq.* (Proposition 65), and Business & Professions Code §§ 17200, *et seq.* (“Unfair Competition Law”), by knowingly and intentionally exposing persons to a chemical known to the State of California to cause reproductive toxicity, namely lead, without first providing a clear and reasonable warning to such individuals.

1.4 For purposes of this Consent Judgment only, the parties stipulate that this Court has jurisdiction over allegations of violations contained in the Complaint and personal jurisdiction over the Settling Defendant as to the acts alleged in the Complaint, that venue is proper in the County of San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a resolution of all claims which could have been raised in the Complaint based on the facts alleged therein.

1.5 Settling Defendant denies, generally and specifically, the allegations set forth in the Complaint.

1.6 For the purpose of avoiding prolonged litigation, the parties enter into this Consent Judgment as a full settlement of all claims that were raised in the Complaint based on the facts alleged therein, or which could have been raised in the Complaint arising out of

1 the facts alleged therein. By execution of this Consent Judgment, Settling Defendant does  
2 not admit any violations of Proposition 65 or the Unfair Competition Law or any other law  
3 and specifically denies that it has committed any such violations and maintains that all Wine  
4 Vinegar products it has sold and distributed in California have been and are in compliance  
5 with all laws. Nothing in this Consent Judgment shall be construed as an admission by  
6 Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law.  
7 However, this paragraph shall not diminish or affect the responsibilities and duties of the  
8 parties under this Consent Judgment.

9 1.7 For the purposes of this Consent Judgment, the term "Effective Date" shall  
10 mean the date upon which this Consent Judgment is approved and entered as a Judgment by  
11 the Court.

12 2. CLEAR AND REASONABLE WARNINGS

13 2.1 Warning Standard. Settling Defendant shall not sell or offer for sale in  
14 California Wine Vinegars that contain lead at levels that exceed 34 parts per billion ("ppb")  
15 unless warnings are given in accordance with one or more of the provisions set forth below.

16 a. Shelf Warning. Settling Defendant may provide warning by placing a  
17 notice on the top shelf of any rack of shelves in Settling Defendant's stores where Wine  
18 Vinegars are sold. The warning shall state as follows: "CALIFORNIA PROPOSITION 65  
19 WARNING: The Red Wine Vinegars and Balsamic Vinegars on these shelves contain lead,  
20 a chemical known to the State of California to cause birth defects and other reproductive  
21 harm." Each sign shall be no smaller than 5 inches x 7 inches, and the form and type shall  
22 be substantially similar to that which is attached hereto as Exhibit A.

23 b. Product Labeling. A warning may be placed on the packing, labeling  
24 or directly onto all Wine Vinegar products that includes the language as follows:  
25 "WARNING: This product contains lead, a chemical known to the State of California to  
26 cause birth defects and other reproductive harm." Product label warnings shall be placed  
27 with such conspicuousness as compared with other words, statements, designs and/or  
28 devices as to render it likely to be read and understood by an ordinary individual under

1 customary conditions of use or purchase.

2 2.2 In the event that some, but not all, Wine Vinegars sold by Andronico's  
3 contain lead in excess of 34 pbb, Andronico's may utilize the shelf warnings with the  
4 language as described in paragraph 2.1(a) of this Consent Judgment.

5 2.3 Any changes to the language or format of the Warning required by this section  
6 shall be made only after obtaining ELF's approval.

7 2.4 Settling Defendant, prior to offering for sale any Wine Vinegar without a  
8 warning, shall require the producer and/or distributor of that product to provide test results,  
9 and the raw data from the testing, to Settling Defendant. Settling Defendant may rely on  
10 those test results so long as the facility that performed the tests confirms in writing that it  
11 utilized the testing protocol of Professor A. Russell Flegal, attached hereto as Exhibit B.

12 ELF shall have the right to be provided with the test results and raw data if a Wine  
13 Vinegar product is offered for sale without a warning regarding lead, and Settling Defendant  
14 shall have thirty (30) days to provide the test results and raw data to ELF. ELF shall keep all  
15 such information confidential except as is necessary to contest the exemption from warning  
16 of the product.

17 2.5 Provisions of the Warning in paragraphs 2.1 or 2.2 of this Consent Judgment  
18 shall fully and completely satisfy Andronico's obligations to provide a warning for all Wine  
19 Vinegars with respect to the presence of lead under Proposition 65, the California Business  
20 and Professions Code, and all federal, state or local laws, regulations, or ordinances.

21 2.6 If ELF settles this, or any lawsuit regarding the same allegations as in the  
22 instant Complaint, wherein any retailer is permitted to provide a warning regarding lead in  
23 Wine Vinegar that is different in content, method or appearance, Settling Defendant shall, at  
24 its discretion, have the option to warn in the manner alleged in section 2.1, or in the manner  
25 by the subsequent settlement. Settling Defendant shall have the warnings placed no later  
26 than sixty (60) days after entry of this Consent Judgment.

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1 3. MONETARY RELIEF

2 3.1 Settling Defendant shall pay to ELF the sum of \$40,000 as settlement  
3 proceeds (“Settlement Proceeds”) to be applied toward its costs, attorneys’ fees and a *cy*  
4 *pres* donation. The distribution of the Settlement Proceeds shall be at the sole discretion of  
5 ELF. Settling Defendant shall pay \$10,000 within five (5) business days after the entry of  
6 this Consent Judgment. Settling Defendant shall pay to ELF \$10,000 ninety (90) days  
7 thereafter, \$10,000 ninety (90) days after the second payment, and a final \$10,000 ninety  
8 (90) days after the third payment. The settlement drafts shall be delivered to one of ELF’s  
9 counsel, Alan M. Caplan, Bushnell, Caplan & Fielding, LLP, 221 Pine Street, Suite 600, San  
10 Francisco, California 94104. These Settlement Proceeds shall be delivered to ELF’s  
11 counsel, and ELF shall have the sole and exclusive responsibility of apportioning and paying  
12 to the State of California any portion of the Settlement Proceeds as required by California  
13 Health & Safety Code § 25249.12(d), and Andronico’s shall have no liability if payments to  
14 the State of California are not made by ELF.

15 3.2 This payment shall be the only monetary obligation of the Settling Defendant  
16 with respect to this Consent Judgment; each party shall bear its own attorneys’ fees and  
17 costs.

18 3.3 ELF agrees to comply with the reporting requirements referenced in California  
19 Health & Safety Code § 25249.7(f). Pursuant to the regulations promulgated under that  
20 section, ELF shall present this Consent Judgment to the California Attorney General’s  
21 Office within two (2) days after receipt of all necessary signatures. ELF also agrees to serve  
22 a copy of the Noticed motion to approve and enter the Consent Judgment on the Attorney  
23 General’s Office at least forty-five (45) days prior to the date set for hearing of the motion in  
24 the Superior Court of the City and County of San Francisco.

25 3.4 The Settling Parties acknowledge that, pursuant to Health & Safety Code  
26 § 25249.7, a noticed motion must be filed to obtain judicial approval of the Consent  
27 Judgment. Accordingly, the Settling Parties agree to file a joint motion for approval of the  
28 settlement, which shall be prepared by ELF within a reasonable period of time after the date

1 this agreement is signed by all parties.

2 4. MODIFICATION OF CONSENT JUDGMENT

3 4.1 This Consent Judgment may be modified by written agreement between ELF  
4 and the Settling Defendant, after noticed motion, and upon entry of a modified Consent  
5 Judgment by the Court thereon, or upon motion of ELF or the Settling Defendant as  
6 provided by law or upon entry of a modified Consent Judgment by the Court.

7 5. APPLICATION OF CONSENT JUDGMENT

8 5.1 This Consent Judgment shall apply to and be binding upon ELF and the  
9 Settling Defendant, their divisions, subdivisions, parent entities or subsidiaries, and  
10 successors or assigns of either of them. officers, directors, and shareholders.

11 5.2 Each signatory to this Consent Judgment certifies that he or she is fully  
12 authorized by the party that he or she represents to enter into and execute the Consent  
13 Judgment on behalf of the party represented and legally bind that party.

14 6. CLAIMS COVERED

15 6.1 This Consent Judgment is a final and binding resolution between ELF and the  
16 Settling Defendant, of any violation of Proposition 65 and Business and Professions Code  
17 section 17200, *et seq.*, or any other statutory or common law claim that could have been  
18 asserted against the Settling Defendant for failure to provide clear, reasonable and lawful  
19 warnings of exposures to lead that result from the ingestion of Wine Vinegar.

20 6.2 For purposes of this Consent Judgment, the term “Wine Vinegar” shall mean  
21 any red vinegar, including but not limited to balsamic vinegar, that contains wine as a  
22 constituent. Nothing in this section shall be construed to affect the liability of any defendant  
23 in this Action other than the Settling Defendant.

24 6.3. Release of Settling Defendant. In further consideration of the promises and  
25 agreements herein contained, and for the payments to be made pursuant to Paragraph 3.1,  
26 ELF, on behalf of itself, its past and current agents, representatives, attorneys, successors  
27 and/or assignees, and in the interest of the general public, hereby waives all rights to  
28 institute or participate in, directly or indirectly, any form of legal action and releases all

1 claims, including, without limitation, all actions, causes of action, in law or in equity, suits,  
2 liabilities, demands, obligations, damages, costs, fines penalties, losses or expenses,  
3 including, but not limited to, investigation fees, expert fees and attorneys' fees of any nature  
4 whatsoever, whether known or unknown, fixed or contingent against the Settling Defendant  
5 and each of its customers, owners, parent companies, corporate affiliates, subsidiaries and its  
6 respective officers, directors, attorneys, representatives, shareholders, agents, and employees  
7 arising under Proposition 65, Business and & Professions Code § 17200, *et seq* and Business  
8 & Professions Code § 17500, *et seq.*, related to the Settling Defendant's alleged failure to  
9 warn about exposures to or identification of lead contained in Wine Vinegars.

10 ELF and the Settling Defendant further agree and acknowledge that this Consent  
11 Judgment is a full, final, and binding, resolution of any violations of Proposition 65,  
12 Business & Professions Code § 17200, *et seq.* and Business & Professions Code § 17500, *et*  
13 *seq.*, that have been or could have been asserted in the Complaint against the Settling  
14 Defendant for its alleged failure to provide clear and reasonable warnings of exposure to or  
15 identification of lead contained in Wine Vinegars.

16 In addition, ELF, on behalf of its, itself, attorneys and its agents, waives all rights to  
17 institute or participate in, directly or indirectly, any form of legal action and releases all  
18 claims against the Settling Defendant arising under Proposition 65, Business & Professions  
19 Code § 17200, *et seq* and Business & Professions Code § 17500, *et seq.*, related to the  
20 Settling Defendant's alleged failures to warn about exposures to or identification of lead  
21 contained in the Wine Vinegars and for all actions or statements regarding the alleged  
22 failures to warn about exposures to or identification of lead contained in the Wine Vinegars  
23 made by Settling Defendants or its attorneys or representatives, in the course of responding  
24 to those alleged violations of Proposition 65, Business & Professions Code § 17200, or  
25 Business & Professions Code § 17500, as alleged in the Complaint.

26 It is specifically understood and agreed that ELF and the Settling Defendant intend  
27 that Settling Defendant's compliance with the terms of this Consent Judgment will resolve  
28 all issues and liability, now and in the future, concerning the Settling Defendant's alleged

1 violation of the requirements of Proposition 65, Business & Professions Code § 17200, *et*  
2 *seq.* and Business & Professions Code § 17500, *et seq.*, as to lead in Wine Vinegars.

3 6.4 Release of ELF. Settling Defendant waives all rights to institute any form of  
4 legal action against ELF or its attorneys or representatives, for all actions taken or  
5 statements made by ELF and its attorneys or representatives, in the course of seeking  
6 enforcement of Proposition 65, Business & Professions Code § 17200, *et seq.* or Business &  
7 Professions Code § 17500, *et seq.*, in these Actions.

8 7. RETENTION OF JURISDICTION

9 7.1 This Court shall retain jurisdiction of this matter to implement this Consent  
10 Judgment.

11 8. COURT APPROVAL

12 8.1 If this Consent Judgment is not approved by the Court, it shall be of no force  
13 or effect and cannot be used in any proceeding for any purpose.

14 9. ENFORCEMENT OF CONSENT JUDGMENT WITH REGARD  
15 TO RETAIL STORES IN CALIFORNIA

16 9.1 Before moving to enforce the terms and conditions of this Consent Judgment  
17 against the Settling Defendant with respect to an alleged violation occurring at a retail store  
18 located in California, ELF must follow the procedures set forth in subsections 9.2 through  
19 9.4.

20 9.2 In the event that ELF and/or its attorneys, agents or assigns, identify one or  
21 more retail stores in California owned and operated by Andronico's at which Wine Vinegars  
22 are sold (hereinafter "retail outlet") for which the warnings required under paragraph 2 of  
23 this Consent Judgment are not being given, ELF shall notify, in writing, Settling Defendant  
24 of such alleged failure to warn (the "Notice of Breach"). The Notice of Breach shall be sent  
25 by first-class mail, with proof of service within sixty (60) days of the date the alleged  
26 violation was observed. The Notice of Breach shall identify the date the alleged violation  
27 was observed and the retail outlet in question, and reasonably describe the nature of the  
28 alleged violation with sufficient detail to allow the Settling Defendant to determine the basis

1 of the claim being asserted and the identities of the Wine Vinegars to which those assertions  
2 apply.

3 9.3 In the event that ELF identifies a specific retail outlet, other than the specific  
4 one identified in subsection 9.2 of this Consent Judgment, not giving warnings for Wine  
5 Vinegars as required under paragraph 2, ELF shall serve the Settling Defendant with another  
6 Notice of Breach in the manner described in subsection 9.2 and provide the same  
7 information as required in subsection 9.2.

8 9.4 ELF shall take no further action against the Settling Defendant unless ELF  
9 discovers, at least thirty (30) days after service of the Notices of Breach served pursuant to  
10 subsections 9.2 and 9.3, another failure to warn for any Wine Vinegars at the same retail  
11 outlet(s) identified in the Notices of Breach served pursuant to subsections 9.2 and 9.3.

12 10. GOVERNING LAW

13 10.1 The terms of this Consent Judgment shall be governed by the laws of the State  
14 of California. In the event that Proposition 65 is repealed or is otherwise rendered  
15 inapplicable by reason of law generally, or as to Wine Vinegars specifically, then the  
16 Settling Defendant shall have no further obligations pursuant to this Consent Judgment with  
17 respect to, and to the extent those Wine Vinegars are so affected.

18 11. EXCHANGE IN COUNTERPARTS

19 11.1 Stipulations to this Consent Judgment may be executed in counterparts by  
20 and/or facsimile which taken together shall be deemed to constitute one document.

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12. NOTICES

12.1 All correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail, return receipt requested, or (2) overnight courier on ELF or Settling Defendant by the others at the addresses listed in Exhibit C. Either ELF or Settling Defendant may specify a change of address to which all notices and other communications shall be sent.

IT SO STIPULATED:

DATED: \_\_\_\_\_

ENVIRONMENTAL LAW FOUNDATION

By: \_\_\_\_\_  
JAMES WHEATON

DATED: 3/7/05

ANDRONICO'S MARKETS, INC.

By: *LR*  
Law Razzano Sr VP/Gen  
Andronico's Market

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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12. NOTICES

12.1 All correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail, return receipt requested, or (2) overnight courier on ELF or Settling Defendant by the others at the addresses listed in Exhibit C. Either ELF or Settling Defendant may specify a change of address to which all notices and other communications shall be sent.

IT SO STIPULATED:

DATED: 11/8/05

ENVIRONMENTAL LAW FOUNDATION

By:   
JAMES WHEATON

DATED: \_\_\_\_\_

ANDRONICO'S MARKETS, INC.

By: \_\_\_\_\_  
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IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: \_\_\_\_\_

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JUDGE OF THE SUPERIOR COURT

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ENVIRONMENTAL LAW FOUNDATION

James R. Wheaton, Esq.  
Environmental Law Foundation  
1736 Franklin Street, Ninth Floor  
Oakland, CA 94612  
Tel: (510) 208-4555  
Fax: (510) 208-4562

ANDRONICO'S MARKETS, INC.

Jim Johnson  
Risk Manager  
Andronico's Markets, Inc.  
1109 Washington Avenue  
Albany, CA 94706  
Tel: (510) 649-6102  
Fax: (510) 649-6107

With copy to:

Kenneth W. Pritikin, Esq.  
Foley McIntosh Frey & Claytor  
A Professional Corporation  
3675 Mount Diablo Boulevard, Suite 250  
Lafayette, CA 94549  
Tel: (925) 284-3020  
Fax: (925) 284-3029

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# EXHIBIT A

**CALIFORNIA  
PROPOSITION 65  
WARNING:**

**! The Red Wine Vinegars and  
Balsamic Vinegars on these  
shelves contain lead, a chemical  
known to the State of California  
to cause birth defects and other  
reproductive harm.**

# EXHIBIT B



## Determination of lead in vinegar by ICP-MS and GFAAS: evaluation of different sample preparation procedures

Kuria Ndung'u<sup>a,b,\*</sup>, Sharon Hibdon<sup>a</sup>, A. Russell Flegal<sup>a</sup>

<sup>a</sup> Environmental Toxicology, WIGS University of California, Santa Cruz, CA 95064, USA

<sup>b</sup> Institute of Applied Environmental Research (ITM), Stockholm University, Frescativägen 54, S-106 91 Stockholm, Sweden

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Available online 17 April 2004

### Abstract

Lead concentrations of 59 different types of vinegars ( $15\text{--}307\ \mu\text{g l}^{-1}$  in balsamic vinegars and  $36\text{--}50\ \mu\text{g l}^{-1}$  in wine vinegars) were determined using both inductively coupled plasma mass spectrometry (ICP-MS) and graphite furnace atomic absorption spectrometry (GFAAS). Although the precision of direct analyses, following simple aqueous dilutions, with either instrumental method was poor, that precision, following nitric acid and/or hydrogen peroxide digestions, markedly improved with either instrument and the values obtained with the two instruments were in good agreement. The efficacy of different digestions, including (1) nitric acid using a heating block, with or without addition of hydrogen peroxide and (2) mixtures of nitric acid and hydrogen peroxide using ultraviolet (UV) photolysis, were then assessed. The latter procedure was found to be much faster and more efficient, but it was limited by the relatively high levels of contaminant lead in hydrogen peroxide. Consequently, it is recommended that lead concentrations in vinegar be measured following a nitric acid digestion and UV photolysis to oxidize all organic matter before ICP-MS or GFAAS analysis; and it is further recommended that the thermal settings for the latter analyses be adjusted to account for the apparent presence of relatively volatile organolead compounds in vinegar digesta.

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**Keywords:** Organolead compounds; Vinegar; ICP-MS

### 1. Introduction

Exposure to contaminant lead remains a public concern because of its pervasiveness in the environment and increasing evidence of lead's sub-lethal toxicities at exposure levels lower than previously thought harmful [1]. In response to those concerns, there have been orders of magnitude reductions in atmospheric emissions of industrial lead, which have resulted in a pronounced decrease in blood lead levels in the US and elsewhere [2]. Now, the most common route of exposure to the general population, in countries where leaded gasoline has been banned, is through the ingestion of food and water contaminated with lead [3].

Among those foods is vinegar, which can contain relatively high levels of lead [4,5]. It may, like wine, come from the grapes vinegar is made from and it might be of

endogenous or anthropogenic origin [6,7]. Conversely, the lead may come from contamination during the vinegar production process [8].

Although there are numerous published studies on the concentration of lead in wine, only a handful of studies have looked at the concentration of lead in vinegar [4,5,9,10]. While some of those studies measured the lead in vinegar or wine directly after simple dilution [10–12], quite often a sample clean-up step was employed prior to the instrumental analysis. This pretreatment is often needed because, in addition to acetic acid and alcohol, both vinegar and wine contain, suspended particles and polymeric organic compounds, particularly sugars, which interfere with GFAAS and ICP-MS measurements. The polymeric organic matter might cause blockage of the injector tube and cones of the ICP, due to incomplete pyrolysis of the sugars in the plasma and formation of residual carbon deposits [13]. During the GFAAS analysis, incomplete pyrolysis of the organic matter produces fumes and accumulation of carbonaceous residue

\* Corresponding author. Tel.: +46-86747236; fax: +46-86747636.  
E-mail address: [kuria.ndungu@itm.su.se](mailto:kuria.ndungu@itm.su.se) (K. Ndung'u).

after several graphite tube firings which adversely affect the analysis [11].

Two types of oxidation are most common: acidification and irradiation. Wet digestion using nitric acid is usually employed to oxidize the organic matter, and those oxidative digestions are often accelerated by heating the samples in Teflon or other inert and trace metal clean containers on a heating block or heating plate. The addition of hydrogen peroxide also speeds up the oxidation process, but most peroxides contain relatively high amounts of lead. Alternatively, ultraviolet (UV) and/or microwave energy have also been used to oxidize the organic matter in wine [13,14] which is a precursor of many vinegars. Since UV photolysis has not previously been applied to vinegar digestions, and the relative accuracy and efficacy of the different analytical methods for measuring lead in vinegar have not been previously determined.

## 2. Background

Vinegar is produced by a two-stage fermentation process of suitable sugar or starch containing agricultural material such as grapes, apples, rice, garlic or even onions [15]. Besides vinegar from red and white wine, there are special products such as vinegar from Jerez (Sherry vinegar) in Spain or balsamic vinegar elaborated from a specific region of Italy, Modena [15] Aceto Balsamico di Modena, a typical Italian product is produced from fresh grape must, which is concentrated up to a third of its original volume by a slow heating process. The traditional method of production requires storage in different wood barrels up to 25 years. Another balsamic vinegar is produced by blending the concentrated must with acetic acid, and the mixture is allowed to mature in wooden barrels to develop the typical organoleptic properties [15].

Consequently, there may be pronounced differences in the organic composition of different types of vinegars, including different balsamic vinegars. There may also be large differences in the lead concentrations of different vinegars, based on the origins of the ingredients and the production process. Both of those variables complicate accurate and precise measurements of lead in vinegar.

## 3. Experimental

### 3.1. Reagents

All solutions were prepared with de-ionized water ( $18\text{ M}\Omega\text{ cm}^{-1}$ ) from a Milli-Q<sup>®</sup> analytical reagent-grade water purification system (Millipore, Bedford, MA). Calibration standard solutions and internal standards were prepared from commercial lead standard solution (Spex Plasma, Edison, NJ). Trace metal grade (TMG) nitric acid and hydrochloric acid (Fisher Scientific, Pittsburgh, PA) were used for cleaning laboratory ware. Optima grade nitric acid (Fisher) was used for the preparation of calibration standard solutions and analytical solutions. High purity hydrogen peroxide 30% (Ultrapur, Bayer, Pittsburg, NJ), together with nitric acid was used for both heat and UV digestions. The matrix modifier used for GFAAS analysis contained 0.05 mg of  $\text{NH}_4\text{H}_2\text{PO}_4$  and 0.003 mg of  $\text{Mg}(\text{NO}_3)_2$  per 5  $\mu\text{l}$  of solution (Environmental Express, Mt. Pleasant, SC).

### 3.2. Instrumentation

#### 3.2.1. ICP-MS

All ICP-MS measurements were made with a Thermo-Finnigan Element magnetic sector high resolution ICP-MS using a Glass Expansion Conical nebulizer, a Scott-type double pass spray chamber (cooled to  $10^\circ\text{C}$ ) and standard nickel cones. Since there were small or no polyatomic interferences for lead, it was analyzed at low resolution ( $r = 300$ ) using  $^{209}\text{Bi}$  as an internal standard. The instrument operating parameters and data acquisition details are listed in Table 1.

#### 3.2.2. GFAAS

Graphite furnace atomic absorption spectroscopy (GFAAS) analyses were made on a Perkin-Elmer SIMAA 6000 instrument, fitted with a Zeeman background corrector and AS72 auto sampler. End capped, traversely heated pyrocoated graphite tubes with an integrated L'vov platform (Perkin-Elmer) were used. A lead electrodeless discharge lamp (Perkin-Elmer) was used at the recommended line of 283.3 nm and a lamp current of 450 mA. Magnesium nitrate ( $\text{Mg}(\text{NO}_3)_2$ )/ammonium phosphate ( $\text{NH}_4\text{H}_2\text{PO}_4$ ) was

Table 1  
ICP-MS operating and acquisition parameters

RF power (W)	1250				
Plasma gas flow ( $\text{l min}^{-1}$ )	13				
Auxiliary gas flow ( $\text{l min}^{-1}$ )	0.75				
Nebulizer gas flow ( $\text{l min}^{-1}$ )	0.85–0.95 (optimized daily)				
Sample flow rate ( $\mu\text{l min}^{-1}$ )	60				
Data acquisition (low resolution, 200 scans)					
Isotope	% mass window	Sample time (s)	Samples/peak	Segment duration (s)	Detection mode
$^{208}\text{Pb}$	5	0.001	100	0.050	Count
$^{209}\text{Bi}$	5	0.001	100	0.050	Count

**Table 2**  
Optimized GFAAS program for measuring lead concentrations ( $\mu\text{g l}^{-1}$ ) in vinegar, following acid, UV and/or microwave digestions

Temperature (°C)	Ramp time (s)	Hold time (s)	Gas flow ( $\text{ml min}^{-1}$ )	Read
110	5	30	250	No
130	15	30	250	No
700	15	30	250	No
1400	0	3	0	Yes
2450	1	3	250	No

used as a chemical modifier. The optimized, based on tests conducted for this report (see following section on GFAAS Program Optimization) GFAAS program used is shown in Table 2.

### 3.3. Samples

Vinegar samples were purchased from retail stores in California. Fifty-two different types of balsamic vinegar, four wine vinegars, one apple cider vinegar, one rice vinegar and one garlic vinegar were analyzed. The vinegars were mostly in glass bottles, but some were in plastic or ceramic bottles.

### 3.4. Contamination control

The exteriors of the bottles were rinsed with deionized water before opening in a HEPA filtered (Class 100) trace metal clean laboratory. Aliquots were placed in Teflon digestion vessels that were cleaned with Micro-90 liquid laboratory grade detergent (Cole-Parmer, Vernon Hills, IL) and deionized water when first used or after an incomplete digestion. Subsequently, digestion vessels were re-cleaned by soaking them overnight in 8 M TMG hydrochloric acid followed by at least 8 h in hot TMG nitric acid. The vessels were then rinsed with reagent water and dried under class 100 HEPA-filtered laminar flow air. All other plastic ware (polyethylene or Teflon) used for storing analytical solutions were cleaned using the same procedure, dried, capped, and stored under class 100 HEPA-filtered laminar flow air or double bagged in trace metal clean, self-locking (Zip loc<sup>®</sup>) plastic bags. The GFAAS was in a HEPA-filtered air room and directly beneath a HEPA-filtered (Class 100) laminar flow canopy within a plastic enclosure.

### 3.5. Vinegar digestions

#### 3.5.1. Heating block digestions

Analytical portions were weighed (0.5–1.0 g) into Teflon digestion vessels, and 10 ml of TMG nitric acid was added. Vessels were covered loosely with acid cleaned Teflon lids and placed in the heating block (CPI International, Santa Rosa, CA). They were initially digested at 50 °C for 2–3 h to avoid sputtering then the temperature was increased to 90 °C, and then digested to dryness. After cooling, the digests were dissolved in 1 M TMG nitric acid, producing a clear to light

yellow analytical solutions. These were then analyzed for their lead concentration by GFAAS or ICP-MS.

#### 3.5.2. UV digestions

The UV digestion unit consisted of a medium pressure mercury vapor discharge tube (1200 W; Hanovia, Union, NJ) positioned on the ceiling of a purpose-built aluminum housing, (36 cm × 29 cm × 23 cm; UVO-cleaner model 342, Jelight Inc., Laguna Hills, CA), which was cooled by a fan. A digital photometer (model JL1400A, Jelight Inc., Irvine, CA) was used to monitor the power of the UV radiation during the oxidation ( $x = 9.2 \pm 0.4 \text{ mW cm}^{-2}$  during the continuous operation of the Hg lamp).

The digestions were carried out by placing 16 custom-made PTFE 15 ml digestion cups fitted with quartz glass caps in the UV digestion unit.

Vinegar samples (0.5 g) were weighed in tarred Teflon vials. These and 1 ml of TMG nitric acid and 0.5 ml of 30% hydrogen peroxide were added prior to the UV treatment.

### 3.6. Quality control

Sample batches consisted of 24 analytical portions including several duplicate samples. Spikes of lead were added ( $90\text{--}150 \mu\text{g l}^{-1}$ ) prior to digestion to several vinegar analytical portions representative of the variety of products. Standard solutions were analyzed after every 10 analytical solutions to ensure instrument performance. Each analytical batch contained at least three method blanks, three spiked analytical samples, and three reference materials. Because there is no commercially available certified reference material for lead in vinegar (or wine), we used the National Institute of Standards and Technology (NIST) 1640 Standard Reference Material (SRM) for trace metals in natural waters (NIST, Gaithersburg, MD) with a lead concentration (where  $X$  is the mean  $\pm$  S.D.) of  $27.89 \pm 0.14 \mu\text{g l}^{-1}$  to monitor the extraction efficiency of the digestion process.

## 4. Results and discussion

### 4.1. Nitric acid digestion

As previously noted, only a small number of studies have been published on the determination of lead in vinegar [4,5,9,10]. Most of them have employed a sample pretreatment to destroy the organic matter, which might interfere with GFAAS or ICP-MS analyses. In contrast, a few studies have reported direct analysis of lead in wine by GFAAS [16] or ICP-MS [11,17] after a simple aqueous dilution.

However, our attempts to analyze vinegar with or without dilution by either GFAAS or ICP-MS resulted in erroneously high lead concentration values (compared to nitric acid digested vinegar) and relatively poor precision. This analytical variability is illustrated in Table 3, which is a summary of the lead determination in four different types of balsamic

Table 3  
Comparison of lead concentrations in four different balsamic vinegars analyzed by GFAAS and ICP-MS with and without nitric acid digestion

Vinegar	Lead concentration <sup>a</sup> ( $\mu\text{g l}^{-1}$ )			
	Simple dilution		Digested with nitric acid	
	GFAAS	ICP-MS	GFAAS	ICP-MS
Balsamic-1	595 (18)	447 (7)	319 (9)	306 (6)
Balsamic-2	653 (14)	205 (5)	198 (7)	174 (2)
Balsamic-3	277 (38)	68 (16)	61 (7)	60 (5)
Balsamic-4	349 (4)	109 (17)	99 (9)	95 (4)

<sup>a</sup> Mean and relative standard deviation (values in parenthesis) of at least six determinations.

vinegars (six replicate digestions or analyses). Because of their complex organic content, those vinegars proved to be the most difficult to analyze by either GFAAS or ICP-MS and with and without a prior nitric acid digestion.

Specifically, measurements with both types of instruments yielded significantly ( $P \leq 0.05$ , paired  $t$  test) higher lead concentrations in balsamic vinegars after simple aqueous dilutions compared to measurements after acid digestions. The disparity was greater in direct analyses of undigested diluted vinegars by GFAAS. In addition to vinegar matrix interferences, we noticed irreproducible sample deposition on the graphite tube due to adhesion of vinegar solutions to the Teflon GFAAS deposition tubing. Moreover, this problem persisted after filtering and diluting the vinegars.

The agreement and precision of the analyses between the two instruments was greatly improved ( $R = 0.997$ ,  $m = 0.94$ , simple linear regression) after nitric acid digestions. These improvements are attributed to the oxidation of organic matter. That destruction eliminates interferences resulting from nonspecific absorption and scattering of light due to concomitant species in the vinegar solutions.

#### 4.2. UV and heat digestion

Nitric acid, and to a lesser extent hydrogen peroxide, are widely used for wet digestions of organic and inorganic matter prior to instrumental analyses of metals. The oxidative digestions are accelerated by heating the samples in Teflon or other inert, trace metal clean containers on a heating block or heating plate. Those thermal energy sources are now often being replaced by microwave and UV radiation in sample preparations where acid digestion is necessary, because they may be faster and may be done within a closed system [13,18].

Comparing the two methods, nitric acid digestions with UV radiation were faster than those with heating blocks and the digestions were more complete. While the addition of hydrogen peroxide further enhanced the degradation of organic material in the vinegars, the amount of contaminant lead in TMG hydrogen peroxide we used was relatively high ( $\sim 15 \mu\text{g l}^{-1}$ ) and comparable to the lead concentration in some of the vinegars. Thus, cleaner hydrogen peroxide is

necessary for digestion of vinegars with lead concentration in the low to sub  $\mu\text{g l}^{-1}$  level.

#### 4.3. GFAAS analysis

Although the instrument manufacturer (Perkin-Elmer) recommended a maximum ashing and atomization temperatures of 400 and 1400 °C, respectively, in the furnace program for lead determination, the use of chemical modifiers allows much higher ashing and atomization temperatures. Freschi et al. [11] used an ashing temperature of 1000 °C and an atomization temperature of 1800 °C to determine lead in diluted wine samples and nitric acid wine digests using a phosphate/magnesium matrix modifier. Buldini et al. [19] also used a phosphate/magnesium modifier and were able to determine lead in nitric acid wine digests using ashing and atomization temperatures of 900 and 1800 °C, respectively.

In the absence of a vinegar or similar matrix SRM with certified lead concentration, we initially started the optimization of the furnace program using digested vinegar spikes and NIST SRM 1640 (natural water) that had undergone a similar nitric acid digestion process as the vinegars. We used the manufacturers recommended ashing and atomization temperatures with a  $\text{Mg}(\text{NO}_3)_2/\text{NH}_4\text{H}_2\text{PO}_4$  chemical modifier. We found ashing and atomization temperatures of 800 and 1400 °C, respectively, to be optimum for analysis of digested natural water SRM and quantitative recovery. However, the same furnace program produced low lead recoveries of spiked digested vinegar samples.

An investigation of the GFAAS measurements of vinegar digests with similar lead concentrations as the SRM showed a sharp drop in absorbance between 700 and 800 °C of the digested vinegar samples, but not for the SRM. This disparity is shown in Fig. 1. It contains plots of the variation of absorbance during ashing and atomization temperatures steps of the two types of samples.

Curvatures in both plots indicate the digestion of the vinegar samples produced a relatively labile lead compound(s). Their volatilization between 700 and 800 °C markedly altered the measurements of lead concentrations of the vinegar, which was not replicated in the measurements of lead in the SRM. This thermal variability underscores the importance of close investigation of the furnace program optimization for different sample types and matrices.

#### 4.4. Quality control

Process blanks (reagent water) were also analyzed together with the samples. The mean blank lead concentration was  $0.03 \mu\text{g l}^{-1}$  ( $n = 4$ ) with a standard deviation of 0.04, giving a detection limit of  $0.12 \mu\text{g l}^{-1}$  analyzed by GFAAS after nitric acid and heat digestion. The spike recovery ( $x \pm \text{S.D.}$ ) of six different vinegars was  $96 \pm 5\%$ , while the mean recovery of NIST 1640 SRM digests was  $97.4 \pm 1.3\%$ . The relative standard deviation for duplicate analysis was  $< 8\%$ .

to process the vinegar and increase the oxidation of its organic constituents. Although the digestion times may be further enhanced with the addition of hydrogen peroxide, the amount of contaminant lead in TMG hydrogen peroxide is too high for measurements of lead concentrations in vinegars with concentrations  $<50 \mu\text{g l}^{-1}$ . Therefore, we recommend nitric acid digestion of vinegars before ICP-MS or GFAAS determination, and that the latter measurements use ashing and atomization temperatures of 600 and 1300 °C, respectively, rather than the manufacturer's recommended settings because of the apparent volatilization of relatively labile forms of lead in vinegars above those temperatures.

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# EXHIBIT C

1 ENVIRONMENTAL LAW FOUNDATION

2 James R. Wheaton, Esq.  
3 Environmental Law Foundation  
4 1736 Franklin Street, Ninth Floor  
5 Oakland, CA 94612  
6 Tel: (510) 208-4555  
7 Fax: (510) 208-4562

6 ANDRONICO'S MARKETS, INC.

7 Jim Johnson  
8 Risk Manager  
9 Andronico's Markets, Inc.  
10 1109 Washington Avenue  
11 Albany, CA 94706  
12 Tel: (510) 649-6102  
13 Fax: (510) 649-6107

12 With copy to:

13 Kenneth W. Pritikin, Esq.  
14 Foley McIntosh Frey & Claytor  
15 A Professional Corporation  
16 3675 Mount Diablo Boulevard, Suite 250  
17 Lafayette, CA 94549  
18 Tel: (925) 284-3020  
19 Fax: (925) 284-3029

17  
18  
19  
20  
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23  
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