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10 Attorneys for Plaintiff  
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF SAN FRANCISCO

14  
15 MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION,

16 Plaintiff,

17 v.

18 WHOLE FOODS MARKET CALIFORNIA,  
19 INC., a corporation, and DOES 1 to 20,

20 Defendants.

CASE NO. CGC-12-520998

**[PROPOSED] CONSENT JUDGEMENT**

21  
22 1. INTRODUCTION

23 1.1. On or about January 4, 2012, plaintiff MATEEL ENVIRONMENTAL  
24 JUSTICE FOUNDATION ("Mateel"), provided a 60-Day Notice of Violation to the California  
25 Attorney General, the District Attorneys of every county in California, the City Attorneys of every  
26 California city with a population greater than 750,000, and defendant Whole Foods Market  
27 California, Inc., alleging that these entities, through sales in California of liquid foods dispensed  
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1 from certain bulk food dispensing equipment ("Bulk Food Dispensing Equipment"), including bulk  
2 kombucha, tamari (soy sauce), vinegar, honey, and maple syrup were violating Health & Safety  
3 Code section 25249.6. Mateel issued a subsequent 60-Day Notice on May 30, 2013 to Whole  
4 Foods Market California, Inc. and Mrs. Gooch's Natural Food Markets, Inc. alleging that these  
5 entities violated Health & Safety Code section 25249.6 through the sale of Kombucha. The January  
6 4, 2012 60-Day Notice and the May 30, 2013 60-Day Notice shall collectively be referred to herein  
7 as "Notice." Whole Foods Market California, Inc. and Mrs. Gooch's Natural Food Markets, Inc.  
8 shall collectively be referred to herein as "Whole Foods" or "Defendants."

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10 1.2. On May 22, 2012, plaintiff Mateel, acting in the public interest pursuant to  
11 Health and Safety Code section 25249.7(d), filed a Complaint for Civil Penalties and Injunctive  
12 Relief in San Francisco County Superior Court, Case No. CGC-12-520998 ("Complaint") against  
13 Defendants based on the allegations contained in the Notice.

14 1.3. This case involves alleged lead exposures that Mateel claims are caused by  
15 Bulk Food Dispensing Equipment used to dispense bulk kombucha, tamari (soy sauce), honey and  
16 maple syrup sold at Whole Foods stores in California, including at least two stores in San Francisco.  
17 For purposes of this Consent Judgment, Bulk Food Dispensing Equipment is defined to include all  
18 equipment used to dispense bulk kombucha, soy sauce, honey and maple syrup. The Parties hereto  
19 agree that sales of vinegar is the subject of another consent judgment into which Whole Foods  
20 previously entered and Mateel agrees to dismiss its claims in this action regarding vinegar.

21 1.4. Whole Foods is a business that employs more than ten people. Whole Foods  
22 sells in the State of California foods, including bulk kombucha, tamari (soy sauce), maple syrup and  
23 honey that is dispensed through Bulk Food Dispensing Equipment. During a time period pertinent  
24 to this enforcement action, Plaintiff alleges that Bulk Food Dispensing Equipment contained  
25 component parts that contained lead which leached into the food when it was dispensed through the  
26 Bulk Food Dispensing Equipment.  
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1.5 Pursuant to Health & Safety Code § 25249.9, lead and lead compounds (hereinafter “lead”) are chemicals known to the State of California to cause cancer and reproductive toxicity. Under certain circumstances, products containing lead that are sold or distributed in California are subject to Proposition 65's warning requirement. Mateel alleges that the bulk kombucha, tamari (soy sauce), maple syrup and honey that Whole Foods sells, when served via Bulk-food Dispensing Equipment that utilize parts that have food contact surfaces that contain Pb, requires a Proposition 65 warning.

1.6 For purposes of this Consent Judgment only, and without waiving any arguments to the contrary that it might assert in any other matter, Whole Foods agrees not to contest the court’s jurisdiction over the allegations of violations contained in the Notice and the complaint, and over Whole Foods, and to enter and enforce the provisions of this Consent Judgment as a full and final settlement and resolution of the allegations made against Whole Foods contained in the Notice or arising therefrom, to the extent those allegations pertain to lead exposures caused by Bulk Food Dispensing Equipment. For purposes of this Consent Judgment only, Whole Foods agrees that venue is proper in the City and County of San Francisco. Both parties to this Consent Judgment stipulate to the court’s jurisdiction to enter and enforce the provisions of this Consent Judgment as a full and final settlement and resolution of the allegations made against Whole Foods regarding lead exposures caused by Bulk Food Dispensing Equipment.

1.7 This consent judgment resolves all claims in the Notice and complaint to the extent those claims pertain to lead exposures caused by Bulk Food Dispensing Equipment. Whole Foods denies and disputes all allegations made in the Notice and in the complaint. This Consent Judgment shall not constitute an admission with respect to any allegation made in the Notice, nor may this Consent Judgment or compliance with it be used as an admission or evidence of any fact, wrongdoing, misconduct, culpability, violation of law or liability on the part of Whole Foods or any person or entity released herein.

1 2. INJUNCTIVE RELIEF

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3 2.1 No later than 90 days after the Effective Date, and as to all Whole Foods  
4 stores in California, any in-store Bulk-Food Dispensing Equipment shall have no food contact  
5 surfaces that contain lead. Whole Foods will further provide a declaration by an individual  
6 knowledgeable and authorized to speak on behalf of Whole Foods to Mateel acknowledging  
7 compliance with this section.

8 3. ENTRY OF CONSENT JUDGMENT

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10 The parties hereby request that the court promptly enter this Consent Judgment.  
11 Upon entry of this Consent Judgment, the Parties waive their respective rights to a hearing or trial  
12 on the allegation made in the Complaint.

13 4. MATTERS COVERED BY THIS CONSENT JUDGMENT

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15 4.1 Mateel's Release on Behalf of the Public Interest.

16 As to all exposures to lead alleged in the Notice to be caused by Bulk Food  
17 Dispensing Equipment, this Consent Judgment provides a full release of liability on behalf of the  
18 Public Interest for all claims that were or could have been brought up through the Effective Date  
19 (which shall be the date the court enters this Consent Judgment). As to all exposures to lead alleged  
20 in the Notice to be caused by Bulk Food Dispensing Equipment that is in the stream of commerce as  
21 of the Effective Date, this Consent Judgment also provides a full release of liability on behalf of the  
22 Public Interest to Whole Foods, including but not limited to Whole Foods' past, present and future  
23 parents, holding companies, controlling entities, joint ventures or other investment vehicles, related  
24 or affiliated companies, subsidiaries, predecessors, successors, and assigns to any of them for all  
25 claims that were or could have been brought up through the Effective Date. Notwithstanding any  
26 other provision of this Consent Judgment, no claim or matter is released on behalf of the public  
27 interest unless that claim or matter was raised in the Notice. This Consent Judgment does not

1 release any entity that supplies Whole Foods with bulk kombucha, tamari (soy sauce), maple syrup  
2 or honey.

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4 4.2 Mateel's Release on Behalf of Itself.

5 As to Bulk Food Dispensing Equipment, Mateel, acting in its individual capacity  
6 only and not in its representative capacity, waives all rights to institute any form of legal action and  
7 releases all claims which were or could have been brought up through the Effective Date. As to  
8 Bulk Food Dispensing Equipment that is in the stream of commerce as of the Effective Date, on  
9 behalf of Mateel, in its individual capacity, this Consent Judgment also provides a full release of  
10 liability to Whole Foods, including, but not limited to its past, present and future parents, holding  
11 companies, controlling entities, joint ventures or other investment vehicles, related or affiliated  
12 companies, subsidiaries, predecessors, successors, and assigns to any of them for all claims that  
13 were or could have been brought up through the Effective Date. In furtherance of the foregoing,  
14 Mateel, acting on behalf of itself, hereby waives any and all rights and benefits which it now has, or  
15 in the future may have, conferred upon it with respect to lead exposures alleged to be caused by  
16 Bulk Food Dispensing Equipment by virtue of the provisions of Section 1542 of the California Civil  
17 Code, which provides as follows:

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19 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**  
20 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME**  
21 **OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE**  
22 **MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR**

23 Mateel understands and acknowledges that the significance and consequence of this  
24 waiver of California Civil Code Section 1542 is that even if Mateel has future claims arising out of  
25 or resulting from, or related directly or indirectly to, in whole or in part, Bulk Food Dispensing  
26 Equipment it will not be able to pursue that claim against Whole Foods, nor may it pursue such a  
27 claim against any and all entities related to Whole Foods including, but not limited to, their past,

1 present and future parents, holding companies, controlling entities, related or affiliated companies,  
2 subsidiaries, predecessors, successors and assigns to any of them. Furthermore, Mateel  
3 acknowledges that it intends these consequences for any such claims which may exist as of the date  
4 of this release but which Mateel does not know exist, and which, if known, would materially affect  
5 its decision to enter into this Consent Judgment, regardless of whether its lack of knowledge is the  
6 result of ignorance, oversight, error, negligence or any other cause. Mateel does not release any  
7 entity that supplies Whole Foods with bulk kombucha, tamari, maple syrup or honey.

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9 **5. NOTICE AND CURE/MEET AND CONFER**

10           5.1 At any time more than 30 days after the Effective Date of this Consent  
11 Judgment, Mateel may provide Whole Foods with a Notice of Violation, alleging that Bulk Food  
12 Dispensing Equipment does not comply with section 2.1 of this Consent Judgment. Mateel shall  
13 provide with the Notice of Violation sent to Whole Foods copies of documents and laboratory  
14 analysis that support the allegations of non-compliance.

15           5.2 Within 30 days of receiving such a Notice of Violation, Whole Foods shall  
16 provide to Mateel its Notice of Election to contest or not to contest the Notice of Violation. If  
17 Whole Foods elects not to contest the Notice of Violation, it shall, within 10 business days after  
18 providing its Notice of Election, stop use of the identified Bulk Food Dispensing Equipment, and  
19 provide Mateel with written notice of such discontinuation of use the alleged non-compliant  
20 product. If Whole Foods elects not to contest and otherwise complies with this paragraph, it shall  
21 be deemed to be in compliance with this Consent Judgment and Mateel may take no further action  
22 related to the alleged non-compliant products and the Notice of Violation and Mateel may not hold  
23 Whole Foods liable for any other remedies, including injunctive relief, penalties, sanctions,  
24 monetary award, attorney's fees, or costs associated with the investigation and prosecution of the  
25 alleged non-compliant products the Notice of Violation for which Whole Foods elected – pursuant  
26 to this paragraph – to settle and not to contest.  
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1                   5.3     In the event Whole Foods elects to contest the allegations contained in any  
2 Notice of Violation Mateel sends pursuant to this Section, Whole Foods may provide Mateel along  
3 with its Notice of Election any evidence that, in Whole Foods' judgment, supports its position. In  
4 the event Mateel agrees with Whole Foods' position, it shall within 15 days of receiving such  
5 Notice of Election and evidence notify Whole Foods of its agreement and Mateel shall take no  
6 further action regarding the Alleged Non-Compliant Products subject to the Notice and the evidence  
7 that Whole Foods provided. If Mateel disagrees with Whole Foods' position, Mateel shall, within  
8 30 days, notify Whole Foods of such and shall in writing provide Whole Foods with the reasons for  
9 Mateel's disagreement. Thereafter, the Parties shall meet and confer to attempt to resolve their  
10 dispute or mutually acceptable terms.

11                   5.4     If within 60 days of receipt of a Notice of Violation either a.) there is no  
12 resolution of the meet and confer process required under paragraph 5.3; b.) Whole Foods fails to  
13 provide written Notice of Election not to contest the Notice of Violation; or c.) Whole Foods fails  
14 to correct any uncontested violations identified in the Notice of Violation within 30 days, then  
15 Mateel may – at its election – seek to enforce the terms and conditions contained in this Consent  
16 Judgment in the Superior Court of the State of California, or may initiate an enforcement action for  
17 new violations pursuant to Health & Safety Code § 25249.7(d). In any such proceeding, Mateel  
18 may seek whatever fines, costs, penalties or remedies as may be provided by law for any violation  
19 of Proposition 65 or this Consent Judgment.  
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## 21 6. SETTLEMENT PAYMENT

22                   6.1     In settlement of all the claims pertaining to lead exposures alleged to have  
23 been caused by Bulk Food Dispensing Equipment Whole Foods shall pay a total amount of  
24 \$220,000, which shall be allocated as follows: \$20,000 shall be paid as a civil penalty; \$160,000  
25 shall be paid to the Klamath Environmental Law Center ("KELC") to cover a portion of Mateel's  
26 attorneys fees and litigation costs, \$25,000 shall be paid to Californians for Alternatives to Toxics  
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1 (“CATs”), and \$15,000 shall be paid to the Ecological Rights Foundation (“ERF”). Funds paid to  
2 CATs and ERF may only be used for activities that reduce exposures to toxic chemicals, or which  
3 promote increased worker and community awareness of health hazards posed by lead and other  
4 toxic chemicals. Pursuant to Health & Safety Code § 25249.12(d), the above-referenced \$20,000  
5 civil penalty shall be distributed as follows: Mateel’s 25% share of civil penalties is directed to  
6 Californians for Alternatives to Toxics. The remaining 75% of the above-referenced civil penalties  
7 shall be made payable, pursuant to statute, to California’s Office of Environmental Health Hazard  
8 Assessment (“OEHHA”). The above-referenced payments shall be forwarded by Whole Foods to  
9 its counsel so that they are received at least five days prior to the hearing date scheduled for  
10 approval of this Consent Judgment. Whole Foods’s counsel shall notify Klamath Environmental  
11 Law Center via email upon receipt of the funds. If this Consent Judgment is not entered by the  
12 court within 120 days, of the date scheduled for approval, the above-referenced payments shall be  
13 returned to Whole Foods and the provisions of this Consent Judgment shall be null and void. If the  
14 Consent Judgment is entered by the court, within five days of that date, Whole Foods Market’s  
15 counsel shall ensure the above described payments are delivered via UPS or FedEx for next  
16 business day delivery, to Klamath Environmental Law Center.

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**7. ENFORCEMENT OF JUDGMENT**

7.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties hereto.

**8. MODIFICATION OF JUDGMENT**

8.1 This Consent Judgment may be modified only upon entry of a modified Consent Judgment by the court. Any party may seek such modification by noticed motion, with notice provided to both the other party and to the Attorney General.

8.2 Mateel agrees not to contest any motion made by Whole Foods to modify this



1 Consent Judgment in the event Whole Foods has sought, and obtained, written consent from the  
2 Attorney General to such modification. Mateel also agrees not to contest any motion by Whole  
3 Foods to conform this Consent Judgment to any "safe use determination" established by OEEHA,  
4 pursuant to 27 Cal. Code Regs. § 25204 or any successor regulation, regarding lead content of Bulk  
5 Food Dispensing Equipment.

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7 9. NOTICE

8 9.1 When any party is entitled to receive any notice or report under this Consent  
9 Judgment, the notice or report shall be made in writing and sent via U.S. Mail or other manner of  
10 overnight delivery to the following:

11 9.1.1 For Mateel: William Verick, Klamath Environmental Law Center,  
12 424 First Street, Eureka, CA 95501

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14 9.1.2 For Whole Foods: John H. Hempfling, Whole Foods Market, 550  
15 Bowie Street, Austin, TX 78703. With a copy to: Wells Blaxter, BlaxterLaw, 1 Bush Street,  
16 Suite 650, San Francisco, CA 94104.

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18 10. AUTHORITY TO STIPULATE

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

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23 11. RETENTION OF JURISDICTION

24 This court shall retain jurisdiction to implement this Consent Judgment.

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26 12. ENTIRE AGREEMENT

27 This Consent Judgment contains the sole and entire agreement and understanding of

1 the parties with respect to the entire subject matter hereof, and any and all prior discussions,  
2 negotiations, commitments and understandings related hereto. No representations, oral or  
3 otherwise, express or implied, other than those contained herein have been made by any party  
4 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
5 to exist or bind any of the parties.

6 13. GOVERNING LAW  
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8 The validity, construction and performance of this consent judgment shall be  
9 governed by the laws of the State of California, without reference to any conflicts or law provisions  
10 of California law.

11 14. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)  
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13 Mateel agrees to comply with Health & Safety Code § 25249.7's reporting and  
14 approval requirements and as implemented by various regulations.

15 15. EXECUTION IN COUNTERPART  
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17 This Consent Judgment may be executed in counterparts and/or by facsiile, which  
18 taken together shall be deemed to constitute one original document.


19 IT IS SO STIPULATED:  
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22 DATED: December 19, 2013

23 By:   
24 WHOLE FOODS MARKET CALIFORNIA, INC.  
25 AND MRS. GOOCH'S NATURAL FOOD  
26 MARKETS, INC.

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DATED: Feb. 5, 2014  
~~December~~, ~~2013~~

By   
WILLIAM VERICK – CEO of MATEEL  
ENVIRONMENTAL JUSTICE FOUNDATION

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

DATED: \_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT