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

CENTER FOR ENVIRONMENTAL HEALTH, ) Case No. CGC-12-526396  
Plaintiff, ) **[PROPOSED] CONSENT JUDGMENT**  
v. )  
FAYEON DISTRIBUTORS, INC., *et al.*, )  
Defendants. )

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**1. INTRODUCTION**

1.1 The Parties to this Consent Judgment are the Center For Environmental Health, a California non-profit corporation (“CEH”), and the companies listed on Exhibit A (collectively, the “Settling Defendants”). The Parties enter into this Consent Judgment to settle certain claims asserted by CEH against Settling Defendants as set forth in the operative complaint (“Complaint”) in the above-captioned matter. This Consent Judgment covers the lead content of ginger and plum

1 snack foods (“Covered Products”) sold or offered for sale by Settling Defendants.

2 1.2 Beginning on September 14, 2012, CEH served multiple 60-day Notices of  
3 Violation under Proposition 65, alleging that Settling Defendants violated Proposition 65 by  
4 exposing persons to lead and lead compounds (“Lead”) contained in Covered Products without  
5 first providing a clear and reasonable Proposition 65 warning.

6 1.3 Each Settling Defendant is a corporation that manufactures, distributes, sells or  
7 offers for sale Covered Products that are offered for sale in the State of California or has done so  
8 in the past.

9 1.4 On November 27, 2012, CEH filed the original Complaint in this matter. On  
10 December 20, 2012, CEH filed the operative First Amended Complaint in this matter. The First  
11 Amended Complaint has since been amended to add additional named defendants.

12 1.5 For purposes of this Consent Judgment only, CEH and Settling Defendants (the  
13 “Parties”) stipulate that this Court has jurisdiction over the allegations of violations contained in  
14 the Complaint and personal jurisdiction over Settling Defendants as to the acts alleged in the  
15 Complaint, that venue is proper in the County of San Francisco, and that this Court has  
16 jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were  
17 or could have been raised in the Complaint based on the facts alleged therein with respect to  
18 Covered Products manufactured, distributed, and/or sold by Settling Defendants.

19 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the  
20 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with  
21 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
22 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
23 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any  
24 other pending or future legal proceedings. This Consent Judgment is the product of negotiation  
25 and compromise and is accepted by the Parties solely for purposes of settling, compromising, and  
26 resolving issues disputed in this Action.

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1       **2.       INJUNCTIVE RELIEF**

2               **2.1       Specification Compliance Date.** To the extent it has not already done so, no more  
3 than fifteen days after the date of entry of this Consent Judgment (“Effective Date”), each Settling  
4 Defendant that purchases Covered Products from a third party shall provide the reformulation  
5 specification set in Section 2.2 to each of such Covered Products suppliers and shall instruct each  
6 such Covered Products supplier to provide it with Covered Products that comply with the  
7 reformulation specification set in Section 2.2. If in the future a Settling Defendant purchases  
8 Covered Products from a new third party that it has not previously provided with instructions  
9 regarding the reformulation specification set in Section 2.2, the Settling Defendant shall provide  
10 the reformulation specification set in Section 2.2 prior to placing an initial order for Covered  
11 Products and instruct the new Covered Products supplier to provide it with Covered Products that  
12 comply with the reformulation specification set in Section 2.2. Each Settling Defendant shall  
13 retain records of communications sent to and received from suppliers that are related to the  
14 requirement of this Section 2.1 for a period of five years from the Effective Date.

15               **2.2       Reformulation of Covered Products.** After the Effective Date, Settling  
16 Defendants shall not purchase, manufacture, ship, sell or offer for sale in California or anywhere  
17 else any Covered Products that contain a concentration of more than seventeen (17) parts per  
18 billion (“ppb”) Lead by weight, such concentration to be determined by use of a test performed by  
19 an accredited laboratory using inductively coupled plasma mass spectrometry (ICP-MS)  
20 equipment with a level of detection of at least ten (10) ppb that meets standard laboratory QA/QC  
21 requirements (the “Reformulation Level”). Subject to Section 7 below, no allocation is made for  
22 naturally occurring Lead in food pursuant to 22 Cal. Code of Regs. §25501.

23               **2.3       Market Withdrawal of Covered Products.** On or before the Effective Date,  
24 Settling Defendants shall: (i) cease shipping the specific Covered Products identified next to their  
25 name on Exhibit A (the “Recall Covered Products”) to stores and/or customers in California; (ii)  
26 withdraw the Recall Covered Products from the market in California; and (iii) send instructions to  
27 any of their stores and/or customers that offer the Recall Covered Products for sale in California to

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1 cease offering such Recall Covered Products for sale and to either return all Recall Covered  
2 Products to Settling Defendants for destruction, or to directly destroy the Recall Covered  
3 Products. Any destruction of the Recall Covered Products shall be in compliance with all  
4 applicable laws. Settling Defendants shall keep and make available to CEH for inspection and  
5 copying records and correspondence regarding the market withdrawal and destruction of the  
6 Recall Covered Products. If there is a dispute over the corrective action, the Parties shall meet and  
7 confer before seeking any remedy in court.

8       2.4     **Supplier and Product Information.** Upon execution of this Consent Judgment,  
9 each Settling Defendant shall provide full and complete information and supporting  
10 documentation as to each Covered Product as further specified on Exhibit B. Such information  
11 shall be provided and attested to under oath by an authorized officer of each such Settling  
12 Defendant. Each Settling Defendant shall cooperate and work in good faith to promptly answer  
13 any follow-up questions or requests for supporting documentation from CEH about the  
14 information and documents to be provided pursuant to this section.

15     **3.     ENFORCEMENT**

16       3.1     **Enforcement Procedures.** Prior to bringing any motion or order to show cause to  
17 enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the violating  
18 party thirty (30) days advanced written notice of the alleged violation. The Parties shall meet and  
19 confer during such thirty (30) day period in an effort to try to reach agreement on an appropriate  
20 cure for the alleged violation. After such thirty (30) day period, the Party seeking to enforce may,  
21 by new action, motion or order to show cause before the Superior Court of San Francisco, seek to  
22 enforce the terms and conditions contained in this Consent Judgment.

23     **4.     PAYMENTS**

24       4.1     **Payments by Settling Defendants.** Within five (5) days of the entry of this  
25 Consent Judgment, each Settling Defendant shall pay the sum set forth for that Settling Defendant  
26 on Exhibit A as further set forth in this Section and on Exhibit A.

27       4.2     **Allocation of Payments.** The total settlement amount for each Settling Defendant

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1 shall be paid in four separate checks in the amounts specified on Exhibit A and delivered as set  
2 forth below. Any failure by a Settling Defendant to comply with the payment terms herein shall  
3 be subject to a stipulated late fee in the amount of \$100 for each day after the delivery date the  
4 payment is received. The late fees required under this Section shall be recoverable, together with  
5 reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 3 of this  
6 Consent Judgment. The funds paid by each Settling Defendant shall be allocated as set forth on  
7 Exhibit A for each Settling Defendant between the following categories and made payable as  
8 follows:

9                   4.2.1 A civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil  
10 penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12 (25%  
11 to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment  
12 ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment for the amount  
13 designated for each Settling Defendant on Exhibit A as "Civil Penalty OEHHA Portion" shall be  
14 made payable to OEHHA and associated with taxpayer identification number 68-0284486. This  
15 payment shall be delivered as follows:

16                                   For United States Postal Service Delivery:  
17   Attn: Mike Gyurics  
18   Fiscal Operations Branch Chief  
19   Office of Environmental Health Hazard Assessment  
20   P.O. Box 4010, MS #19B  
21   Sacramento, CA 95812-4010

22                                   For Non-United States Postal Service Delivery:  
23   Attn: Mike Gyurics  
24   Fiscal Operations Branch Chief  
25   Office of Environmental Health Hazard Assessment  
26   1001 I Street, MS #19B  
27   Sacramento, CA 95814

28                   The CEH portion of the civil penalty payment for the amount designated for each Settling  
Defendant on Exhibit A as "Civil Penalty CEH Portion" shall be made payable to the Center For  
Environmental Health and associated with taxpayer identification number 94-3251981. This  
payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA

1 94117.

2 4.2.2 A payment in lieu of civil penalty to CEH pursuant to Health & Safety  
3 Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH shall use such  
4 funds to continue its work educating and protecting people from exposures to toxic chemicals,  
5 including heavy metals. In addition, as part of its Community Environmental Action and Justice  
6 Fund, CEH will use four percent of such funds to award grants to grassroots environmental justice  
7 groups working to educate and protect people from exposures to toxic chemicals. The method of  
8 selection of such groups can be found at the CEH web site at [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The  
9 payment pursuant to this Section shall be made payable to the Center For Environmental Health  
10 and associated with taxpayer identification number 94-3251981.

11 4.2.3 A reimbursement of a portion of CEH’s reasonable attorneys’ fees and  
12 costs. The attorneys’ fees and cost reimbursement check shall be made payable to the Lexington  
13 Law Group and associated with taxpayer identification number 94-3317175. This payment shall  
14 be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

15 **5. MODIFICATION AND DISPUTE RESOLUTION**

16 5.1 **Modification.** This Consent Judgment may be modified from time to time by  
17 express written agreement of the Parties, with the approval of the Court, or by an order of this  
18 Court upon motion and in accordance with law.

19 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
20 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
21 modify the Consent Judgment.

22 **6. CLAIMS COVERED AND RELEASE**

23 6.1 This Consent Judgment is a full, final and binding resolution between CEH on  
24 behalf of itself and the public interest and each Settling Defendant, and their parents, subsidiaries,  
25 affiliated entities that are under common ownership, directors, officers, employees, and attorneys  
26 (“Defendant Releasees”), and all entities other than those listed in Exhibit C to which a Settling  
27 Defendant distributes or sells Covered Products, including but not limited to distributors,

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1 wholesalers, customers, retailers, franchisees, licensors and licensees (“Downstream Defendant  
2 Releasees”), of any violation of Proposition 65 based on failure to warn about alleged exposure to  
3 Lead contained in Covered Products that were sold by a Settling Defendant prior to the Effective  
4 Date.

5 6.2 CEH, for itself releases, waives, and forever discharges any and all claims against  
6 each Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from  
7 any violation of Proposition 65 or any other statutory or common law claims that have been or  
8 could have been asserted in the public interest regarding the failure to warn about exposure to  
9 Lead arising in connection with Covered Products manufactured, distributed or sold by a Settling  
10 Defendant prior to the Effective Date.

11 6.3 Compliance with the terms of this Consent Judgment by a Settling Defendant and  
12 that Settling Defendant’s Defendant Releasees shall constitute compliance with Proposition 65 by  
13 such Settling Defendant, that Settling Defendant’s Defendant Releasees and that Settling  
14 Defendant’s Downstream Defendant Releasees with respect to any alleged failure to warn about  
15 Lead in Covered Products manufactured, distributed or sold by that Settling Defendant after the  
16 Effective Date.

17 **7. EFFECT OF SUBSEQUENT SETTLEMENTS**

18 7.1 The parties contemplate that future Consent Judgments entered with other  
19 defendants including farmers, processors and manufacturers may involve a higher Reformulation  
20 Level due to an allocation of Lead that is naturally occurring under 22 Cal. Code Regs. §22501.  
21 This higher Reformulation Level may also include additional injunctive requirements that will  
22 ensure that the Lead in the Covered Products is not avoidable by good agricultural or good  
23 manufacturing practices and that the producer, manufacturer, distributor, or holder of the food is at  
24 all times utilizing quality control measures that reduce natural occurring Lead to the lowest level  
25 currently feasible, as such term is defined in 22 Cal. Code Regs. §22501.

26 7.2 Accordingly, if on or before January 1, 2019, the Court enters a Judgment or a  
27 Consent Judgment to which CEH is a party that resolves Proposition 65 claims asserted by CEH  
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1 regarding failure to warn about Lead in Covered Products that: (i) sets forth a Reformulation Level  
2 containing an allocation of Lead that is naturally occurring under 22 Cal. Code Regs. §22501; or  
3 (ii) includes injunctive relief designed to ensure that the Lead in the Covered Products is not  
4 avoidable by good agricultural or good manufacturing practices and that the producer,  
5 manufacturer, distributor, or holder of the food is at all times utilizing quality control measures  
6 that reduce natural occurring Lead to the “lowest level currently feasible” as such term is defined  
7 in 22 Cal. Code Regs. §22501; or (iii) a combination of both, then a Settling Defendant may move  
8 the Court to modify the Reformulation Level in this Consent Judgment so that it is consistent with  
9 the reformulation requirement of such future Judgment or Consent Judgment. Prior to filing any  
10 such Motion the parties shall meet and confer in an attempt to agree on specific language  
11 regarding the modification pursuant to this Section. To the extent a Settling Defendant is a retailer  
12 or otherwise not involved in the farming, manufacture or processing of Covered Products, the  
13 modification may require that the Settling Defendant only purchase Covered Products from  
14 entities that comply with the injunctive requirements of such future Judgment or Consent  
15 Judgment. If the parties are unable to agree on specific language the Settling Defendant shall  
16 inform the Court of both parties position in the papers filed in support of the Motion to Modify  
17 this Consent Judgment.

18 **8. PROVISION OF NOTICE**

19 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
20 notice shall be sent by first class and electronic mail to:

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

26 8.2 When a Settling Defendant is entitled to receive any notice under this Consent  
27 Judgment, the notice shall be sent by first class and electronic mail to the person(s) identified in  
28 Exhibit A for each such Settling Defendant.

8.3 Any Party may modify the person and address to whom the notice is to be sent by



1 sending the other Party notice by first class and electronic mail.

2 **9. COURT APPROVAL**

3 9.1 This Consent Judgment shall become effective on the Effective Date, provided  
4 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and  
5 Settling Defendants shall support approval of such Motion.

6 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect  
7 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

8 **10. GOVERNING LAW AND CONSTRUCTION**

9 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
10 California.

11 **11. ATTORNEYS' FEES**

12 11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
13 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs  
14 unless the unsuccessful Party has acted with substantial justification. For purposes of this Consent  
15 Judgment, the term substantial justification shall carry the same meaning as used in the Civil  
16 Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

17 11.2 Notwithstanding Section 11.1, a Party who prevails in a contested enforcement  
18 action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of  
19 Civil Procedure §1021.5 against a Party that acted with substantial justification. The Party  
20 seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and this  
21 provision shall not be construed as altering any procedural or substantive requirements for  
22 obtaining such an award.

23 11.3 Nothing in this Section 11 shall preclude a party from seeking an award of  
24 sanctions pursuant to law.

25 **12. ENTIRE AGREEMENT**

26 12.1 This Consent Judgment contains the sole and entire agreement and understanding  
27 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,

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

13 **13. RETENTION OF JURISDICTION**

14 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
15 Consent Judgment.

16 **14. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

17 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
18 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
19 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

20 **15. NO EFFECT ON OTHER SETTLEMENTS**


21 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
22 against an entity that is not a Settling Defendant on terms that are different than those contained in  
23 this Consent Judgment.

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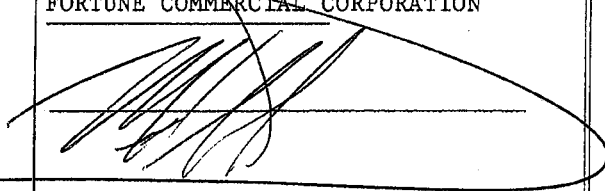
Dated: <u>11/22</u> , 2013	<p><b>CENTER FOR ENVIRONMENTAL HEALTH</b></p> <p></p> <p>_____ CHARLIE PIZMAO Printed Name</p> <p>_____ ASSOCIATE DIRECTOR Title</p>
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Dated: _____, 2013	<p>_____</p> <p>_____</p> <p>By</p> <p>_____</p> <p>Printed Name</p> <p>_____</p> <p>Title</p>
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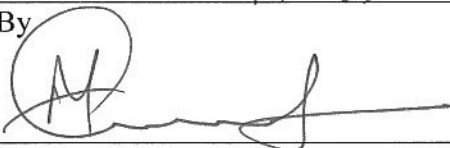
Dated: _____, 2013	CENTER FOR ENVIRONMENTAL HEALTH
	_____
	Printed Name
	Title

Dated: <u>OCT 11</u> , 2013	SETTLING DEFENDANT FORTUNE COMMERCIAL CORPORATION
	
	MELVIN N.A. AVANZADO
	Printed Name
	GENERAL COUNSEL
	Title

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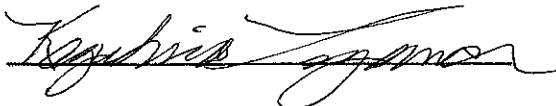
Dated: _____, 2013	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>  _____  _____ Printed Name  _____ Title
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Dated: <u>10-31</u> , 2013	<b>SETTLING DEFENDANT</b> <u>JACK'S WHOLESALE CANDY &amp; TOY CO.</u> <u>MINAZ AHMED</u> By  _____ Printed Name <u>PRESIDENT</u> _____ Title
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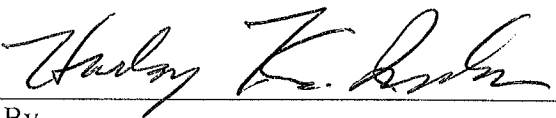
Dated: _____, 2013	CENTER FOR ENVIRONMENTAL HEALTH    _____  _____ Printed Name  _____ Title
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Dated: <u>25 Sept.</u> , 2013	SETTLING DEFENDANT <u>Marukai Corporation</u>   <u>Kazuhiro Toyama</u> Printed Name  <u>Treasurer</u> Title
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**IT IS SO STIPULATED:**

Dated: _____, 2013	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>  _____  _____ Printed Name  _____ Title
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Dated: <u>12/6</u> , 2013	<b>NORTH AMERICAN FOOD DISTRIBUTING COMPANY, INC.</b>   By <u>Harley K. Inaba</u> Printed Name  <u>PRESIDENT</u> Title
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1 **EXHIBIT A**  
2 **Settling Defendants**

3 **Settling Defendant:**

4 **Marukai Corporation**

5 **Covered Product(s) To Be Withdrawn From Market:**

6 Aloha Nut Hut Li Hing Mui; SKU 9110720-000011  
7 Island Cravings Seedless Sweet Li Hing Mui; SKU No. 0-73366-30033-6  
8 Jade Rock Salt Plum; SKU No. 0-73366-12001-9

9 **Defendant's Settlement Payment and Allocation:**

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Total Settlement Payment	\$35,000
Civil Penalty OEHHA Portion	\$3,429
Civil Penalty CEH Portion	\$1,143
Payment in Lieu of Civil Penalty	\$6,848
Attorneys' Fees and Costs	\$23,580

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16 **Person(s) to Receive Notices Pursuant to Section 8:**

17 Brian Link  
18 General Counsel  
19 Marukai Corporation  
20 1740 W. Artesia Blvd.  
21 Gardena, CA 90248  
22 [blink@marukai.com](mailto:blink@marukai.com)  
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**EXHIBIT B**

**Product and Supplier Information**

For each Covered Product sold by your company in the two years prior to the Effective Date, please provide the following information and documents:

1. Covered Product name.
2. Covered Product Description.
3. SKU or UPC number.
4. Name, address, contact person, phone, e-mail and web site of the company from which each Covered Product was purchased.
5. Name, address, contact person, phone, e-mail and web site of importer or distributor.
6. Name, address, contact person, phone, e-mail and web site of product manufacturer.
7. Name, address, contact person, phone, e-mail and web site of any other know entity in the upstream chain of distribution.
8. Date and number of units ordered for each order of a Covered Product purchased from the date two years prior to the Effective Date to the Effective Date. Please attach copies of each Purchase Order or other documentation from each sale.
9. Units of each Covered Product sold from the date two years prior to the Effective Date to the Effective Date.
10. Indicate if any Proposition 65 warnings were provided with each of the Covered Products and if so, provide a copy of such warning.
11. Identify the country of origin of each Covered Product.
12. Identify and attach any test results in your possession for any of the Covered Products.

**EXHIBIT C**

**(LIST OF ENTITIES NOT SUBJECT  
TO DOWNSTREAM DEFENDANT RELEASE)**

List of non-settling defendants that have received  
60-Day Notices re lead in Covered Products from CEH

- Albertson's, LLC
- B & V Enterprises, Inc.
- Buderim Ginger Limited
- Chocolate Signatures LP
- Cost Plus, Inc.
- Dakota Brothers, Inc.
- Draeger's Super Markets
- Foodnet Supermarkets, Inc.
- Garden Grove Superstore Inc.
- Goldstar Supermarket
- Grand BK Corp.
- H Mart, Inc.
- Hosada Bros., Inc.
- Island Pacific Supermarkets, Inc.
- Jade Food Products, Inc.
- Kam Lee Yuen Trading Co., Inc.
- Korean Farm, Inc.
- Longchamp Corporation dba Lion Supermarket
- Marra Bros. Dist., Inc.
- Marshalls of CA, LLC
- Maruhana U.S.A. Corporation
- Mitsuwa Corporation

- 1 • Mrs. Gooch's Natural Food Markets, Inc.
- 2 • Nature's World LLC
- 3 • Next Generation Products, Inc.
- 4 • Oto's Japan Food, Inc.
- 5 • Piedmont Grocery Company
- 6 • Reed's, Inc.
- 7 • Rhee Bros., Inc.
- 8 • Roxy Trading Inc.
- 9 • Safeway Inc.
- 10 • San Pablo Supermarket, Inc.
- 11 • San Young Market, Inc.
- 12 • Shun Fat Supermarket, Inc.
- 13 • Sun Hop Fat Corporation
- 14 • Sunflower Farmers Markets, LLC
- 15 • Tawa Supermarket, Inc.
- 16 • Trader Joe's Company
- 17 • Walkers Chocolates Ltd.
- 18 • Whole Foods Market California, Inc.
- 19 • Wholesale Unlimited, Inc.

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