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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-12-526395
)	
Plaintiff,)	[PROPOSED] CONSENT JUDGMENT
)	
v.)	
)	
FOOD MARKET MANAGEMENT, INC., <i>et al.</i> ,)	
)	
)	
Defendants.)	
)	
)	
)	
)	

1. INTRODUCTION

1.1 The Parties to this Consent Judgment are the Center For Environmental Health, a California non-profit corporation (“CEH”), and Zion Market Irvine, Inc. (the “Settling Defendant”). The Parties enter into this Consent Judgment to settle certain claims asserted by CEH against Settling Defendant as set forth in the operative complaint (“Complaint”) in the

1 above-captioned matter. This Consent Judgment covers the lead content of crystallized ginger
2 baking ingredients (“Covered Products”) sold or offered for sale by Settling Defendant.

3 1.2 On October 8, 2012, CEH served a 60-day Notice of Violation under Proposition
4 65, alleging that Settling Defendant violated Proposition 65 by exposing persons to lead and lead
5 compounds (“Lead”) contained in Covered Products without first providing a clear and reasonable
6 Proposition 65 warning.

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

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

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

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

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”), Settling
4 Defendant shall provide the reformulation specification set forth in Section 2.2 to each of its
5 Covered Products suppliers and shall instruct each such Covered Products supplier to provide it
6 with Covered Products that comply with the reformulation specification set forth in Section 2.2. If
7 in the future Settling Defendant purchases Covered Products from a new third party that it has not
8 previously provided with instructions regarding the reformulation specification set forth in Section
9 2.2, Settling Defendant shall provide the reformulation specification set forth in Section 2.2 prior
10 to placing an initial order for Covered Products and instruct the new Covered Products supplier to
11 provide it with Covered Products that comply with the reformulation specification set in Section
12 2.2. Settling Defendant shall retain records of communications sent to and received from
13 suppliers that are related to the requirement of this Section 2.1 for a period of five years from the
14 Effective Date.

15 **2.2 Reformulation of Covered Products.** After the Effective Date, Settling
16 Defendant shall not purchase, manufacture, ship, sell or offer for sale any Covered Product that
17 know will be sold or offered for sale in California that contains a concentration of more than
18 seventeen (17) parts per billion (“ppb”) Lead by weight, such concentration to be determined by
19 use of a test performed by an accredited laboratory using inductively coupled plasma mass
20 spectrometry (ICP-MS) equipment with a level of detection of at least ten (10) ppb that meets
21 standard laboratory QA/QC requirements (the “Reformulation Level”).

22 **2.3 Market Withdrawal of Covered Products.** To the extent that Settling Defendant
23 has Covered Products in its possession, custody or control, Settling Defendant shall on or before
24 the Effective Date: (i) cease shipping the Ginger Powder SKU No. 8-805017-300066 product (the
25 “Recall Covered Products”) to stores and/or customers in California; (ii) withdraw the Recall
26 Covered Products from the market in California; and (iii) send instructions to any of their stores
27 and/or customers that offer the Recall Covered Products for sale in California to cease offering
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1 such Recall Covered Products for sale and to either return all Recall Covered Products to Settling
2 Defendant for destruction, or to directly destroy the Recall Covered Products. Any destruction of
3 the Recall Covered Products shall be in compliance with all applicable laws. Settling Defendant
4 shall keep and make available to CEH for inspection and copying records and correspondence
5 regarding the market withdrawal and destruction of the Recall Covered Products. If there is a
6 dispute over the corrective action, the Parties shall meet and confer before seeking any remedy in
7 court.

8 **2.4 Supplier and Product Information.** Upon execution of this Consent Judgment
9 and to the extent not previously done, Settling Defendant shall provide full and complete
10 information and supporting documentation as to each Covered Product as further specified on
11 Exhibit A. Such information shall be provided and attested to under oath by an authorized officer
12 of Settling Defendant. Settling Defendant shall cooperate and work in good faith to promptly
13 answer 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 Defendant.** Within five (5) days of the entry of this
25 Consent Judgment, Settling Defendant shall pay a total of \$15,000 as further set forth in this
26 Section.

27 **4.2 Allocation of Payments.** The total settlement amount for Settling Defendant shall
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1 be paid in four separate checks in the amounts set forth below and delivered as set forth below.
2 Any failure by Settling Defendant to comply with the payment terms herein shall be subject to a
3 stipulated late fee in the amount of \$100 for each day after the delivery date the payment is
4 received. The late fees required under this Section shall be recoverable, together with reasonable
5 attorneys' fees, in an enforcement proceeding brought pursuant to Section 3 of this Consent
6 Judgment. The funds paid by Settling Defendant shall be allocated as set forth below between the
7 following categories and made payable in separate checks as follows:

8 4.2.1 A civil penalty pursuant to Health & Safety Code § 25249.7(b) in the
9 amount of \$1,900. The civil penalty payment shall be apportioned in accordance with Health &
10 Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of
11 Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the
12 civil penalty payment in the amount of \$1,425 shall be made payable to OEHHA and associated
13 with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

14 For United States Postal Service Delivery:

15 Attn: Mike Gyurics
16 Fiscal Operations Branch Chief
17 Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

18 For Non-United States Postal Service Delivery:

19 Attn: Mike Gyurics
20 Fiscal Operations Branch Chief
21 Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

22 The CEH portion of the civil penalty payment in the amount of \$475 shall be made
23 payable to the Center For Environmental Health and associated with taxpayer identification
24 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
25 Street, San Francisco, CA 94117.

26 A payment in lieu of civil penalty to CEH pursuant to Health & Safety Code § 25249.7(b),
27 and California Code of Regulations, Title 11, § 3203(b) in the amount of \$2,900. CEH shall use

1 such funds to continue its work educating and protecting people from exposures to toxic
2 chemicals, including heavy metals. In addition, as part of its Community Environmental Action
3 and Justice Fund, CEH will use four percent of such funds to award grants to grassroots
4 environmental justice groups working to educate and protect people from exposures to toxic
5 chemicals. The method of selection of such groups can be found at the CEH web site at
6 www.ceh.org/justicefund. The payment pursuant to this Section shall be made payable to the
7 Center For Environmental Health, associated with taxpayer identification number 94-3251981,
8 and be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

9 4.2.2 A reimbursement of a portion of CEH's reasonable attorneys' fees and
10 costs in the amount of \$10,200. The attorneys' fees and cost reimbursement check shall be made
11 payable to the Lexington Law Group and associated with taxpayer identification number 94-
12 3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
13 Francisco, CA 94117.

14 **5. MODIFICATION AND DISPUTE RESOLUTION**

15 5.1 **Modification.** This Consent Judgment may be modified from time to time by
16 express written agreement of the Parties, with the approval of the Court, or by an order of this
17 Court upon motion and in accordance with law.

18 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
19 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
20 modify the Consent Judgment.

21 **6. CLAIMS COVERED AND RELEASE**

22 6.1 This Consent Judgment is a full, final and binding resolution between CEH on
23 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries,
24 affiliated entities that are under common ownership, directors, officers, employees, and attorneys
25 ("Defendant Releasees"), and all entities, other than those listed on Exhibit B, to which Settling
26 Defendant distributes or sells Covered Products, including but not limited to distributors,
27 wholesalers, customers, retailers, franchisees, licensors and licensees ("Downstream Defendant
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1 Releasees”), of any violation of Proposition 65 based on failure to warn about alleged exposure to
2 Lead contained in Covered Products that were sold by Settling Defendant prior to the Effective
3 Date.

4 6.2 CEH, for itself releases, waives, and forever discharges any and all claims against
5 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any
6 violation of Proposition 65 or any other statutory or common law claims that have been or could
7 have been asserted in the public interest regarding the failure to warn about exposure to Lead
8 arising in connection with Covered Products manufactured, distributed or sold by Settling
9 Defendant prior to the Effective Date.

10 6.3 Compliance with the terms of this Consent Judgment by Settling Defendant and
11 that Settling Defendant’s Defendant Releasees shall constitute compliance with Proposition 65 by
12 Settling Defendant, that Settling Defendant’s Defendant Releasees and that Settling Defendant’s
13 Downstream Defendant Releasees with respect to any alleged failure to warn about Lead in
14 Covered Products manufactured, distributed or sold by Settling Defendant after the Effective Date.

15 **7. EFFECT OF SUBSEQUENT SETTLEMENTS**

16 7.1 The parties contemplate that future Consent Judgments entered with other
17 defendants including farmers, processors and manufacturers may involve a higher Reformulation
18 Level due to an allocation of Lead that is naturally occurring under 27 Cal. Code Regs. § 22501.
19 This higher Reformulation Level may also include additional injunctive requirements that will
20 ensure that the Lead in the Covered Products is not avoidable by good agricultural or good
21 manufacturing practices and that the producer, manufacturer, distributor, or holder of the food is at
22 all times utilizing quality control measures that reduce natural occurring Lead to the lowest level
23 currently feasible, as such term is defined in 27 Cal. Code Regs. § 22501.

24 7.2 Accordingly, if on or before January 1, 2019, the Court enters a Judgment or a
25 Consent Judgment to which CEH is a party that resolves Proposition 65 claims asserted by CEH
26 regarding failure to warn about Lead in Covered Products that: (i) sets forth a Reformulation Level
27 containing an allocation of Lead that is naturally occurring under 27 Cal. Code Regs. §22501; or
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(ii) includes injunctive relief designed to ensure that the Lead in the Covered Products is not avoidable by good agricultural or good manufacturing practices and that the producer, manufacturer, distributor, or holder of the food is at all times utilizing quality control measures that reduce natural occurring Lead to the “lowest level currently feasible” as such term is defined in 27 Cal. Code Regs. § 22501; or (iii) a combination of both, then Settling Defendant may move the Court to modify the Reformulation Level in this Consent Judgment so that it is consistent with the reformulation requirement of such future Judgment or Consent Judgment. Prior to filing any such Motion the parties shall meet and confer in an attempt to agree on specific language regarding the modification pursuant to this Section. To the extent Settling Defendant is a retailer or otherwise not involved in the farming, manufacture or processing of Covered Products, the modification may require that Settling Defendant only purchase Covered Products from entities that comply with the injunctive requirements of such future Judgment or Consent Judgment. If the parties are unable to agree on specific language the Settling Defendant shall inform the Court of both parties position in the papers filed in support of the Motion to Modify this Consent Judgment.

8. PROVISION OF NOTICE

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

Eric S. Somers
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
esomers@lexlawgroup.com

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

Francis S. Ryu, Esq.
RYU LAW FIRM
5900 Wilshire Blvd., Suite 2250
Los Angeles, California 90036
francis@ryulaw.com

1 8.3 Any Party may modify the person and address to whom the notice is to be sent by
2 sending the other Party notice by first class and electronic mail.

3 **9. COURT APPROVAL**

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

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

9 **10. GOVERNING LAW AND CONSTRUCTION**

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

12 **11. ATTORNEYS' FEES**

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

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

24 11.3 Nothing in this Section 11 shall preclude a party from seeking an award of
25 sanctions pursuant to law.
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1 **12. ENTIRE AGREEMENT**

2 12.1 This Consent Judgment contains the sole and entire agreement and understanding
3 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
4 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
5 and therein. There are no warranties, representations, or other agreements between the Parties
6 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
7 other than those specifically referred to in this Consent Judgment have been made by any Party
8 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
9 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
10 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
11 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
12 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
13 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
14 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
15 whether or not similar, nor shall such waiver constitute a continuing waiver.

16 **13. RETENTION OF JURISDICTION**

17 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
18 Consent Judgment.

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

20 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
21 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
22 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

24 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
25 against an entity that is not Settling Defendant on terms that are different than those contained in
26 this Consent Judgment.

1 **16. EXECUTION IN COUNTERPARTS**

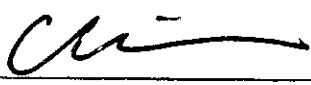
2 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
3 means of facsimile or portable document format (pdf), which taken together shall be deemed to
4 constitute one document.

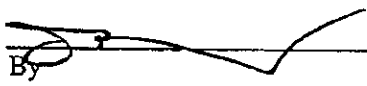
5 **IT IS SO ORDERED, ADJUDGED,**
6 **AND DECREED**

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8 Dated: _____
9 Judge of the Superior Court of the State of California

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1 IT IS SO STIPULATED:

2 Dated: <u>12/2</u> , 2014	CENTER FOR ENVIRONMENTAL HEALTH  By <u>Charles Pittman</u> Printed Name <u>Associate Director</u> Title
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12 Dated: <u>11/4</u> , 2014	ZION MARKET IRVINE, INC.  By <u>Joe Y. Kang</u> Printed Name <u>Corporate Counsel</u> Title
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EXHIBIT A

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 B

**(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

ACH Food Companies, Inc.
Brinkhoff & Monoson, Inc.
The C.F. Sauer Company
Cost Plus, Inc.
Food Market Management, Inc.
Frontier Distribution LLC
Frontier Natural Products Co-op
Gelson's Markets
JFC International Inc.
The Kroger Co.
McCormick & Company, Incorporated
Ralphs Grocery Company
Safeway Inc.
Save Mart Supermarkets
The Spice Hunter, Inc.
Target Corporation
Wal-Mart Stores, Inc.
Whole Foods Market California, Inc.