



1 Attorneys of every California city with a population greater than 750,000, and to Settling  
2 Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons to lead  
3 and lead compounds (“Lead”) contained in Covered Products without first providing a clear and  
4 reasonable Proposition 65 warning.

5 1.3 Settling Defendant is a corporation or other business entity that manufactures,  
6 distributes, sells or offers for sale Covered Products that are sold or offered for sale or has done so  
7 in the past.

8 1.4 On August 23, 2013, CEH filed the Complaint in the above-captioned matter,  
9 naming Settling Defendant as a defendant in the action.

10 1.5 For purposes of this Consent Judgment only, CEH and Settling Defendant (the  
11 “Parties”) stipulate that this Court has jurisdiction over the allegations of violations contained in  
12 the Complaint and personal jurisdiction over each Settling Defendant as to the acts alleged in the  
13 Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to  
14 enter this Consent Judgment as a full and final resolution of all claims which were or could have  
15 been raised in the Complaint based on the facts alleged therein with respect to Covered Products  
16 manufactured, distributed, offered for sale or sold by Settling Defendant.

17 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the  
18 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with  
19 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
20 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
21 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any  
22 other pending or future legal proceedings. This Consent Judgment is the product of negotiation  
23 and compromise and is accepted by the Parties solely for purposes of settling, compromising, and  
24 resolving issues disputed in this Action.

25 **2. INJUNCTIVE RELIEF**

26 2.1 **Specification Compliance Date.** To the extent it has not already done so, no more  
27 than thirty (30) days after the date of entry of this Consent Judgment, if Settling Defendant

1 purchases any Covered Products from a third party that is not under common ownership (a  
2 “Covered Product Supplier”), Settling Defendant shall provide the Reformulation Level set forth  
3 in Section 2.2 to each Covered Product Supplier and shall instruct each such Covered Product  
4 Supplier to provide it with Covered Products that comply with the Reformulation Level set forth  
5 in Section 2.2. If in the future Settling Defendant purchases Covered Products from a Covered  
6 Product Supplier that it has not previously provided with instructions regarding the Reformulation  
7 Level set forth in Section 2.2, Settling Defendant shall provide the Reformulation Level set forth  
8 in Section 2.2 to such Covered Product Supplier prior to placing an initial order for Covered  
9 Products and instruct the Covered Product Supplier to provide it with Covered Products that  
10 comply with the Reformulation Level set forth in Section 2.2. Settling Defendant shall retain and  
11 make available to CEH upon reasonable written request records of communications sent to and  
12 received from Covered Product Suppliers that are related to the requirement of this Section 2.1 for  
13 a period of five (5) years from the date of entry of this Consent Judgment (the “Effective Date”).

14       **2.2 Reformulation of Covered Products.** Settling Defendant shall not purchase,  
15 manufacture, have manufactured by others, ship, sell or offer for sale a Covered Product that will  
16 be sold or offered for sale to California consumers after April 1, 2016 (the “Reformulation  
17 Deadline”) that contains a concentration of more than thirty (30) parts per billion (“ppb”) Lead by  
18 weight (the “Reformulation Level”), such concentration to be determined by use of a test  
19 performed by an accredited laboratory using inductively coupled plasma mass spectrometry (ICP-  
20 MS) equipment with a level of detection of at least ten (10) ppb. Covered Products sold by  
21 Settling Defendant to third parties, including distributors or retailers, before the reformulation  
22 Deadline, or that are otherwise already in the distribution chain before the Reformulation  
23 Deadline, shall not be in violation of Section 2.2 of this Agreement.

24       **2.3 Testing.** Except as provided in Section 2.5, to ensure compliance with Section 2.2,  
25 Settling Defendant shall conduct random testing of Covered Products and take the follow-up  
26 actions described in this section (“Validation Testing”), provided however, that if Settling  
27 Defendant purchases Covered Products from another Settling Defendant, only the Settling  
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1 Defendant that sold the Covered Products to the other Settling Defendant need perform Validation  
2 Testing on those Covered Products.

3                           2.3.1       Covered Products To Be Tested. The Covered Products to  
4 be tested shall be for each type of Covered Product Settling Defendant manufactures or arranges to  
5 be manufactured. The Validation Testing shall be conducted on each production lot of each type  
6 of Covered Product. Such Validation Testing shall be performed on samples drawn randomly  
7 from each production lot of each type of Covered Product. For purposes of this Consent Judgment  
8 a “type” of a Covered Product is either an individual Covered Product as identified by SKU or  
9 other product identifier or one which CEH and a Settling Defendant have agreed has materially the  
10 same characteristics based on the type, supplier and amount of ginger and/or molasses used in its  
11 recipe or formula.

12                           2.3.2       Methods of Testing. Prior to Settling Defendant’s first sale  
13 or distribution of a Covered Product that will be sold or offered for sale to California consumers  
14 after the Effective Date, Settling Defendant shall conduct Validation Testing pursuant to one of  
15 the following methods: (1) the FDA sample preparation protocol discussed in the method entitled  
16 “Elemental Analysis Manual: Section 4.4 Inductively Coupled Plasma-Atomic Emission  
17 Spectrometric Determination of Elements in Food Using Microwave Assisted Digestion”<sup>1</sup> or (2) a  
18 microwave- or heat-assisted acid digestion method employing high-purity reagents, provided that  
19 the laboratory digests at least 0.5 grams of each sample taken from a properly homogenized  
20 complete package of Covered Product, analyzes each sample undiluted by ICP-MS, and uses an  
21 instrument quantitation limit corresponding to less than three (3) micrograms of Lead in the  
22 finished product.

23                           2.3.3       Laboratories Conducting Validation Testing. Any  
24 Validation Testing shall be performed by a laboratory meeting at least one of the following  
25 standards: Environmental Laboratory Certification from the State of California, Department of  
26 Health Services, Environmental Laboratory Accreditation Program; NSF International; American

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27 <sup>1</sup> The referenced FDA test protocol may be found at  
28 <http://www.fda.gov/Food/FoodScienceResearch/LaboratoryMethods/ucm204245.htm>.

1 Association for Laboratory Accreditation for Chemical Testing; International Standards  
2 Organization/IEC via ANSI-ASQ; or an in-house laboratory or other facility experienced in testing  
3 for lead levels in foods that complies with the Production and Process Control System;  
4 Requirements for Laboratory Operations set forth in 21 C.F.R. Part 111, Subpart J, including but  
5 not limited to the requirements for written procedures, requirements for laboratory control  
6 processes, requirements for laboratory methods and examination, record retention policies, and  
7 other laboratory requirements. Laboratories deemed to meet these requirements are listed on  
8 Exhibit B.

9                                   2.3.4           Duration of Testing. In the event that the Validation Testing  
10 demonstrates two (2) years of continuous compliance with the Reformulation Level by Settling  
11 Defendant for a Covered Product, Settling Defendant may send written notice to CEH and  
12 thereafter may cease Validation Testing for that type of Covered Product; provided however, if  
13 there is a material change in the type or level of ginger or molasses used in a Covered Product that  
14 is reasonably likely to affect the Lead levels in the product, then Settling Defendant shall arrange  
15 for testing for a minimum of two (2) consecutive years after that change.

16                                   2.3.5           Covered Products That Exceed Reformulation Level. If a  
17 Validation Testing result indicates that a type of a Covered Product exceeds the Reformulation  
18 Level, Settling Defendant shall ensure that all Covered Products from the same production lot as  
19 those from which the sample of the Covered Product(s) that exceeded the Reformulation Level  
20 were drawn as well as other lots of the same type of Covered Product produced in the same  
21 calendar quarter that were not individually subject to Validation Testing (the “Non-Compliant  
22 Products”) will not be sold or offered for sale to California consumers. Notwithstanding the  
23 foregoing, if the results of Validation Testing of a sample of a type of Covered Product exceeds  
24 the Reformulation Level, Settling Defendant may collect up to three (3) more samples of the type  
25 of Covered Product from the same production lot and have those samples tested in accordance  
26 with Section 2.3. If the results of Validation Testing of all of the samples of a type of Covered  
27 Product collectively yield an arithmetic mean of no more than thirty (30) ppb Lead by weight,

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1 Settling Defendant may treat that type of Covered Product as meeting the Reformulation Level for  
2 that Validation Testing cycle as long as no result for a sample exceeds fifty (50) ppb Lead, subject  
3 to the following confirmatory process. If a sample exceeds fifty (50) ppb Lead, Settling  
4 Defendant may collect three (3) more samples of the type of Covered Product from the same  
5 production lot and have those samples tested in accordance with Section 2.3. Provided that none  
6 of those additional test results exceed forty (40) ppb, those additional test results shall then be used  
7 in place of the sample that exceeded fifty (50) ppb in determining whether the arithmetic mean of  
8 Validation Test results for the Covered Product exceeded the Reformulation Level.

9                   2.3.6       Records. The testing reports and results of the Validation  
10 Testing performed pursuant to this Consent Judgment shall be retained by Settling Defendant for  
11 four (4) years and made available to CEH upon reasonable request.

12           2.4       **Good Faith Commitment to Pursue Further Lead Reduction.** Except as  
13 provided in Section 2.5, Settling Defendant shall continue to take, or cause to be taken, good faith  
14 and commercially reasonable efforts to further reduce the Lead content of its Covered Products  
15 with a goal of Covered Products having a consistent Lead content of seventeen (17) ppb or less.  
16 These efforts shall include, at a minimum, efforts to further adjust recipes and formulas that will  
17 reduce Lead content in Covered Products and attempts to secure Covered Product ingredients such  
18 as molasses and ginger with lower Lead content. Within fifteen (15) days of the Reformulation  
19 Deadline, and annually thereafter for two more years, Settling Defendant shall submit to CEH a  
20 written report of the activities it has undertaken to effectuate its good faith commitment under this  
21 paragraph. If Settling Defendant has test results demonstrating that all of its Covered Products  
22 have a consistent Lead content of seventeen (17) ppb or less and it provides such documentation to  
23 CEH, or if CEH and Settling Defendant otherwise agree in writing, then Settling Defendant need  
24 not submit any subsequent annual report to CEH pursuant to this paragraph.

25           2.5       **Products Not Subject to Testing.** The requirements of Section 2.3 and 2.4 shall  
26 not apply to any Covered Product for which CEH and Settling Defendant agree in writing that  
27 such sections shall not apply to a particular Covered Product provided that Settling Defendant has  
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1 no test results demonstrating lead levels above thirty (30) ppb on such Covered Product in its  
2 possession. With respect to new Covered Products introduced after the Effective Date, if Settling  
3 Defendant provides CEH with a reasonable and sufficient showing that none of the new Covered  
4 Products will not contain more than 20 ppb lead (either through a lead contribution exercise or  
5 other means), CEH will not unreasonably withhold its agreement that Sections 2.3 and 2.4 do not  
6 apply to the new Covered Products.

7 **3. ENFORCEMENT**

8 3.1 **General Enforcement Provisions.** CEH may, by motion or application for an  
9 order to show cause before this Court, enforce the terms and conditions contained in this Consent  
10 Judgment. Any action to enforce alleged violations of Section 2.2 by Settling Defendant shall be  
11 brought exclusively pursuant to this Section 3, and as applicable be subject to the meet and confer  
12 requirement of Section 3.2.4.

13 3.2 **Enforcement of Reformulation Commitment.**

14 3.2.1 Notice of Violation. In the event that CEH identifies a  
15 Covered Product that was sold or offered for sale to California consumers at any time following  
16 the Reformulation Deadline for which CEH has laboratory test results showing that the Covered  
17 Product has a Lead level exceeding the Reformulation Level, CEH may issue a Notice of  
18 Violation pursuant to this Section. Such Notice of Violation shall be based upon a test result  
19 sufficient to establish an exceedance of the Reformulation Level as it is to be evaluated under  
20 Section 2.3; the results employed shall also meet the sampling, testing, and laboratory criteria  
21 specified under Section 2.3.

22 3.2.2 Service of Notice of Violation and Supporting  
23 Documentation.

24 3.2.2.1 Subject to Section 3.2.1, the Notice of Violation shall  
25 be sent to the person(s) identified in Exhibit A to receive notices for Settling Defendant, and must  
26 be served within forty-five (45) days of the date the Covered Products at issue were purchased or  
27 otherwise acquired by CEH, provided, however, that CEH may have up to an additional forty-five  
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1 (45) days to send the Notice of Violation if, notwithstanding CEH’s good faith efforts, the test  
2 data required by Section 3.2.2.2 below cannot be obtained by CEH from its laboratory before  
3 expiration of the initial forty-five (45) day period.

4 3.2.2.2. The Notice of Violation shall, at a minimum, set  
5 forth: (a) the date the alleged violation was observed; (b) the location at which the Covered  
6 Products were offered for sale; (c) a description of the Covered Products giving rise to the alleged  
7 violation, including the name and address of the retail entity from which the sample was obtained  
8 and if available information that identifies the product lot, such as the “best by” or “sell by” date;  
9 and (d) all test data obtained by CEH regarding the Covered Products and supporting  
10 documentation sufficient for validation of the test results, including any laboratory reports, quality  
11 assurance reports and quality control reports associated with testing of the Covered Products.

12 3.2.3 Notice of Election of Response. No more than thirty (30)  
13 days after effectuation of service of a Notice of Violation, Settling Defendant shall provide written  
14 notice to CEH whether it elects to contest the allegations contained in a Notice of Violation  
15 (“Notice of Election”). Failure to provide a Notice of Election within thirty (30) days of  
16 effectuation of service of a Notice of Violation shall be deemed an election to contest the Notice  
17 of Violation.

18 3.2.3.1 If a Notice of Violation is contested, the Notice of  
19 Election shall include all then-available documentary evidence regarding the alleged violation,  
20 including all test data, if any. If Settling Defendant or CEH later acquires additional test or other  
21 data regarding the alleged violation, it shall notify the other party and promptly provide all such  
22 data or information to the party. Any test data used to contest a Notice of Violation shall meet the  
23 criteria of Section 2.3.

24 3.2.4 Meet and Confer. If a Notice of Violation is contested, CEH  
25 and Settling Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30)  
26 days of serving a Notice of Election contesting a Notice of Violation, and if no enforcement action  
27 or application has been filed by CEH pursuant to Section 3.1, Settling Defendant may withdraw  
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1 the original Notice of Election contesting the violation and serve a new Notice of Election  
2 conceding the violation, provided, however, that, in this circumstance, Settling Defendant shall  
3 pay \$2,500 in addition to any payment required under this Consent Judgment. At any time, CEH  
4 may withdraw a Notice of Violation, in which case for purposes of this Section 3.2 the result shall  
5 be as if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of  
6 Violation results within thirty (30) days of a Notice of Election to contest, CEH may file an  
7 enforcement motion or application pursuant to Section 3.1. In any such proceeding, CEH may  
8 seek whatever fines, costs, penalties, attorneys' fees or other remedies are provided by law for  
9 failure to comply with the Consent Judgment.

10                                   3.2.5       Non-Contested Matters. If Settling Defendant elects not to  
11 contest the allegations in a Notice of Violation, it shall identify on a confidential basis to CEH (by  
12 proper name, address of principal place of business and telephone number) the person or entity  
13 that sold the Covered Products to Settling Defendant and the manufacturer and other entities in the  
14 upstream chain of distribution of the Covered Product, provided that such information is  
15 reasonably available. In addition, Settling Defendant shall undertake corrective action and make  
16 payments, if any, as set forth below.

17                                   3.2.5.1       If the test data provided by CEH in support of the  
18 Notice of Violation reports a Lead content in a Covered Product above the Reformulation Level  
19 but less than sixty (60) ppb, then Settling Defendant shall take the following corrective action and  
20 make the following payments, if any:

21                                   A.       Settling Defendant shall include in its Notice of Election a  
22 detailed description with supporting documentation of the corrective action that it has undertaken  
23 or proposes to undertake to address the alleged violation. Any such correction shall, at a  
24 minimum, provide reasonable assurance that Settling Defendant has stopped all Covered Products  
25 having the same lot number or lot identifier, such as "best by" or "sell by" date, as that of the  
26 Covered Products identified in CEH's Notice of Violation from being sold or offered for sale in  
27 California. Settling Defendant shall make available to CEH for inspection and/or copying records

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1 and correspondence regarding the corrective action. If there is a dispute over the corrective action,  
2 Settling Defendant and CEH shall meet and confer pursuant to Section 3.2.4 before seeking any  
3 remedy in court. In no case shall CEH issue more than one NOV per manufacturing lot of a  
4 particular Covered Product.

5 B. If the Notice of Violation is the first Notice of Violation  
6 received by Settling Defendant under Section 3.2.5.1 that was not successfully contested or  
7 withdrawn, no payment shall be required by Settling Defendant. If the Notice of Violation is the  
8 second, third or fourth Notice of Violation received by a Settling Defendant under Section 3.2.5.1  
9 that was not successfully contested or withdrawn, Settling Defendant shall pay \$5,000 for each  
10 Notice of Violation. If Settling Defendant has received more than four Notices of Violation under  
11 Section 3.2.5.1 that were not successfully contested or withdrawn, Settling Defendant shall pay  
12 \$10,000 for each subsequent Notice of Violation. If Settling Defendant produces with its Notice  
13 of Election Test Data from the manufacturer or supplier of the Covered Product that: (i) was  
14 conducted prior to the date CEH purchased the Covered Product that is the subject of the Notice of  
15 Violation; (ii) was conducted on Covered Product that was from the same manufacturing lot as the  
16 Covered Product that is the subject of the Notice of Violation; and (iii) consistently demonstrates  
17 Lead levels below the Reformulation Level as evaluated under Section 2.3, then any payment  
18 under this Section shall be decreased by fifty percent.

19 3.2.5.2 If the test data provided by CEH in support of the  
20 Notice of Violation reports a Lead content in a Covered Product of more than sixty (60) ppb, then  
21 Settling Defendant shall take the following corrective action and make the following payments:

22 A. Settling Defendant shall include in its Notice of Election a  
23 detailed description with supporting documentation of the corrective action that it has undertaken  
24 or proposes to undertake to address the alleged violation. Any such correction shall, at a  
25 minimum, provide reasonable assurance that all Covered Products having the same lot number or  
26 lot identifier, such as “best by” or “sell by” date, as that of the Covered Product identified in  
27 CEH’s Notice of Violation (the “Noticed Covered Products”) will not be thereafter sold or offered

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1 for sale to California consumers, that the Noticed Covered Products are removed from the  
2 California market and that the Settling Defendant has sent instructions to any of its stores and/or  
3 customers that offer the Noticed Covered Products for sale to cease offering the Noticed Covered  
4 Products for sale to California consumers and to either return all such Noticed Covered Products  
5 to Settling Defendant for destruction, or to directly destroy such Noticed Covered Products.  
6 Settling Defendant shall keep and make available to CEH for inspection and copying records and  
7 correspondence regarding the market withdrawal and destruction of the Noticed Covered Products.  
8 If there is a dispute over the corrective action, Settling Defendant and CEH shall meet and confer  
9 before seeking any remedy in court. In no case shall CEH issue more than one NOV per  
10 manufacturing lot of Covered Product.

11 B. If the Notice of Violation is the first, second, third or fourth  
12 Notice of Violation received by Settling Defendant under Section 3.2.5.2 that was not successfully  
13 contested or withdrawn, Settling Defendant shall pay \$16,000 for each Notice of Violation. If  
14 Settling Defendant has received more than four Notices of Violation under Section 3.2.5.2 that  
15 were not successfully contested or withdrawn, Settling Defendant shall pay \$24,000 for each  
16 Notice of Violation. If Settling Defendant produces with its Notice of Election test data on the  
17 Covered Product that: (i) was conducted prior to the date CEH purchased the Covered Product  
18 that is the subject of the Notice of Violation; (ii) was conducted on the same or same type of  
19 Covered Product; and (iii) demonstrates Lead levels below the Reformulation Level as evaluated  
20 under Section 2.3.4, then any payment under this Section shall be decreased by fifty percent.

21 3.2.6 Payments. Any payments under Section 3.2 shall be made  
22 by check payable to the “Lexington Law Group” and shall be paid within thirty (30) days of  
23 service of a Notice of Election triggering a payment and which shall be used as reimbursement for  
24 costs for investigating, preparing, sending and prosecuting Notices of Violation, and to reimburse  
25 attorneys’ fees and costs incurred in connection with these activities.

26 3.3 **Repeat Violations.** If Settling Defendant has received four (4) or more Notices of  
27 Violation that were not successfully contested or withdrawn in any twelve (12) month period then,

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1 at CEH's option, CEH may seek whatever fines, costs, penalties, attorneys' fees or other remedies  
2 that are provided by law for failure to comply with the Consent Judgment. Prior to seeking such  
3 relief, CEH shall meet and confer with Settling Defendant for at least thirty (30) days to determine  
4 if Settling Defendant and CEH can agree on measures that Settling Defendant can undertake to  
5 prevent future violations.

6 **4. PAYMENTS**

7 4.1 **Payments by Settling Defendant.** Within five (5) days of the entry of this  
8 Consent Judgment, Settling Defendant shall pay amounts specified on Exhibit A.

9 4.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall  
10 be paid in four (4) separate checks and delivered as set forth below. Any failure by Settling  
11 Defendant to comply with the payment terms herein shall, at CEH's discretion, be subject to a  
12 stipulated late fee in the amount of \$100 for each day after the delivery date the payment is  
13 received. The late fees required under this Section shall be recoverable, together with reasonable  
14 attorneys' fees, in an enforcement proceeding brought pursuant to Section 3 of this Consent  
15 Judgment. The funds paid by Settling Defendant shall be allocated as set forth on Exhibit A  
16 between the following categories and made payable as follows:

17 4.2.1 A civil penalty pursuant to Health & Safety Code §  
18 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety  
19 Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental  
20 Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty  
21 payment shall be made payable to OEHHA and associated with taxpayer identification number 68-  
22 0284486. This payment shall be delivered as follows:

23  
24 For United States Postal Service Delivery:  
25 Attn: Mike Gyurics  
26 Fiscal Operations Branch Chief  
27 Office of Environmental Health Hazard Assessment  
28 P.O. Box 4010, MS #19B  
Sacramento, CA 95812-4010

1 For Non-United States Postal Service Delivery:  
Attn: Mike Gyurics  
2 Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
3 1001 I Street, MS #19B  
Sacramento, CA 95814

4 The CEH portion of the civil penalty payment shall be made payable to the Center For  
5 Environmental Health and associated with taxpayer identification number 94-3251981. This  
6 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
7 94117.

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

17 4.2.3 A reimbursement of a portion of CEH's reasonable  
18 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made  
19 payable to the Lexington Law Group and associated with taxpayer identification number 94-  
20 3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San  
21 Francisco, CA 94117.

## 22 **5. MODIFICATION AND DISPUTE RESOLUTION**

23 5.1 **Modification.** This Consent Judgment may be modified from time to time by  
24 express written agreement of the Parties, with the approval of the Court, or by an order of this  
25 Court upon motion and in accordance with law.  
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1           5.2     **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
2 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
3 modify the Consent Judgment.

4     **6.       CLAIMS COVERED AND RELEASE**

5           6.1     This Consent Judgment is a full, final and binding resolution between CEH on  
6 behalf of itself and the public interest and each Settling Defendant and Settling Defendant’s  
7 parents, subsidiaries, affiliated entities that are under common ownership, directors, officers,  
8 employees, agents, shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and  
9 all entities to which Settling Defendant distributes or sells Covered Products, including but not  
10 limited to distributors, wholesalers, customers, retailers, franchisees, licensors and licensees  
11 (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn  
12 about alleged exposure to Lead contained in Covered Products that were sold, distributed or  
13 offered for sale by Settling Defendant prior to the Effective Date.

14           6.2     CEH, for itself, its agents, successors and assigns, releases, waives, and forever  
15 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream  
16 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or  
17 common law claims that have been or could have been asserted by CEH individually or in the  
18 public interest regarding the failure to warn about exposure to Lead arising in connection with  
19 Covered Products manufactured, distributed or sold by Settling Defendant prior to the Effective  
20 Date.

21           6.3     Compliance with the terms of this Consent Judgment by Settling Defendant shall  
22 constitute compliance with Proposition 65 by Settling Defendant, its Defendant Releasees and its  
23 Downstream Defendant Releasees with respect to any alleged failure to warn about Lead in  
24 Covered Products manufactured, distributed or sold by Settling Defendant after the Effective Date.

25     **7.       PROVISION OF NOTICE**

26           7.1     When CEH is entitled to receive any notice under this Consent Judgment, the  
27 notice shall be sent by first class and electronic mail to:

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

7.2 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 the person(s) identified in Exhibit A.

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

## **8. COURT APPROVAL**

8.1 This Consent Judgment shall become effective as a contract upon the date signed by CEH and Settling Defendant, whichever is later, provided however, that CEH shall also prepare and file a Motion for Approval of this Consent Judgment and each Settling Defendant shall support approval of such Motion.

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

## **9. GOVERNING LAW AND CONSTRUCTION**

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

## **10. ATTORNEYS' FEES**

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

10.2 Notwithstanding Section 10.1, a Party who prevails in a contested enforcement action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of Civil Procedure §1021.5 against a Party that acted with substantial justification. The Party

1 seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and this  
2 provision shall not be construed as altering any procedural or substantive requirements for  
3 obtaining such an award.

4 10.3 Nothing in this Section 10 shall preclude a party from seeking an award of  
5 sanctions pursuant to law.

6 **11. ENTIRE AGREEMENT**

7 11.1 This Consent Judgment contains the sole and entire agreement and understanding  
8 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
9 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
10 and therein. There are no warranties, representations, or other agreements between the Parties  
11 except as expressly set forth herein. No representations, oral or otherwise, express or implied,  
12 other than those specifically referred to in this Consent Judgment have been made by any Party  
13 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,  
14 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically  
15 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the  
16 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,  
17 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
18 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
19 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
20 whether or not similar, nor shall such waiver constitute a continuing waiver.

21 **12. SUBMISSION OF REPORTS AND DATA TO CEH**

22 12.1 For any report or information that a Settling Defendant submits to CEH pursuant to  
23 this Consent Judgment, a Settling Defendant may make such a submission subject to the terms of  
24 the protective order previously entered in this action and the protective order's terms shall apply to  
25 the report or information as if it were still in effect.

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1 **13. RETENTION OF JURISDICTION**

2 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
3 Consent Judgment.

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

5 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
6 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
7 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

9 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
10 against an entity that is not a Settling Defendant on terms that are different than those contained in  
11 this Consent Judgment.

12 **16. EXECUTION IN COUNTERPARTS**

13 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
14 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
15 constitute one document.

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17 **IT IS SO ORDERED:**

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20 Dated: \_\_\_\_\_, 2016 \_\_\_\_\_  
21 Judge of the Superior Court

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**IT IS SO STIPULATED:**


Dated: <u>22 JAN</u> , 2015	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>   _____ Signature  <u>CHRISTINE PIZANO</u> _____ Printed Name  <u>ASSOCIATE DIRECTOR</u> _____ Title
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Dated: _____, 2015	<b>GENERAL MILLS, INC.</b>  _____ Signature  _____ Printed Name  _____ Title
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**IT IS SO STIPULATED:**

Dated: _____, 2015	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>  _____ Signature  _____ Printed Name  _____ Title
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Dated: <u>January 4</u> , 201 <u>6</u>	<b>GENERAL MILLS, INC.</b>   _____ Signature  <u>Benjamin Irby</u> _____ Printed Name  <u>Business Unit Director</u> _____ Title
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**EXHIBIT A**  
**Settling Defendant**

**Settling Defendant:** General Mills, Inc.

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

Total Settlement Payment	\$ 145,000
Civil Penalty OEHHA Portion	\$ 14,400
Civil Penalty CEH Portion	\$ 4,800
Payment in Lieu of Civil Penalty	\$ 28,800
Attorneys' Fees and Costs	\$ 97,000

**Person(s) to Receive Notices Pursuant to Section 7:**

David Biderman  
Perkins Coie LLP  
1888 Century Park East Suite 1700  
Los Angeles, CA 90067-1721

Breena M. Roos  
Perkins Coie LLP  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101  
BRoos@perkinscoie.com

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**EXHIBIT B**

**Laboratories Deemed To Comply with the Requirements of Section 2.3.3**

- Curtis & Tompkins Laboratories
- Covance Laboratories
- Exova, Inc.
- K Prime, Inc.
- Medallion Labs
- National Food Laboratory, Inc.
- Silliker, Inc.