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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,	)	Case No. RG-13-693015
	)	
Plaintiff,	)	<b>[PROPOSED] CONSENT JUDGMENT</b>
	)	<b>AS TO CONTINENTAL MILLS, INC.</b>
v.	)	
	)	
GENERAL MILLS, INC., <i>et al.</i> ;	)	
	)	
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 Continental Mills, Inc. (“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 above-captioned matter. This Consent Judgment covers baking mix products that contain molasses, ginger, or both molasses and ginger (“Covered Products”) sold by Settling Defendant that have been or will be sold or offered for sale to California consumers.

1.2 On January 27, 2014, CEH served a 60-day Notice of Violation of Proposition 65 to the California Attorney General, the District Attorneys of every county in California, the City

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. On  
9 April 14, 2014, the original complaint was amended to add Settling Defendant as named  
10 defendant.

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

18 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the  
19 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with  
20 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
21 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
22 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any  
23 other pending or future legal proceedings. This Consent Judgment is the product of negotiation  
24 and compromise and is accepted by the Parties solely for purposes of settling, compromising, and  
25 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 thirty (30) days after the date of entry of this Consent Judgment, any Settling Defendant that  
4 purchases any Covered Products from a third party that is not under common ownership (a  
5 “Covered Product Supplier”) shall provide the Reformulation Level set forth in Section 2.2 to each  
6 Covered Product Supplier and shall instruct each such Covered Product Supplier to provide it with  
7 Covered Products that comply with the Reformulation Level set forth in Section 2.2. If in the  
8 future Settling Defendant purchases Covered Products from a Covered Product Supplier that it has  
9 not previously provided with instructions regarding the Reformulation Level set forth in Section  
10 2.2, Settling Defendant shall provide the Reformulation Level set forth in Section 2.2 to such  
11 Covered Product Supplier prior to placing an initial order for Covered Products and instruct the  
12 Covered Product Supplier to provide it with Covered Products that comply with the Reformulation  
13 Level set forth in Section 2.2. Settling Defendant shall retain and make available to CEH upon  
14 reasonable written request records of communications sent to and received from Covered Product  
15 Suppliers that are related to the requirement of this Section 2.1 for a period of five (5) years from  
16 the date of entry of this Consent Judgment (the “Effective Date”).

17               **2.2       Reformulation of Covered Products.** Settling Defendant shall not purchase,  
18 manufacture, have manufactured, ship, sell or offer for sale any Covered Products that will be sold  
19 or offered for sale to California consumers after the Effective Date (the “Reformulation  
20 Deadline”) that contain a concentration of more than thirty (30) parts per billion (“ppb”) Lead by  
21 weight (the “Reformulation Level”). Such concentration shall be determined by use of a test  
22 performed by an accredited laboratory using inductively coupled plasma mass spectrometry (ICP-  
23 MS) equipment with a level of detection of at least ten (10) ppb.

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

11                                   2.3.2       Methods of Testing. Prior to Settling Defendant’s first sale  
12 or distribution of a Covered Product that will be sold or offered for sale to California consumers  
13 after the Effective Date, Settling Defendant shall conduct Validation Testing pursuant to one of  
14 the following methods: (1) the FDA sample preparation protocol discussed in the method entitled  
15 “Elemental Analysis Manual: Section 4.4 Inductively Coupled Plasma-Atomic Emission  
16 Spectrometric Determination of Elements in Food Using Microwave Assisted Digestion”<sup>1</sup> or (2) a  
17 microwave- or heat-assisted acid digestion method employing high-purity reagents, provided that  
18 the laboratory digests at least 0.5 grams of each sample taken from a properly homogenized  
19 complete package of Covered Product, analyzes each sample undiluted by ICP-MS, and uses an  
20 instrument quantitation limit corresponding to less than three (3) micrograms of Lead in the  
21 finished product.

22                                   2.3.3       Laboratories Conducting Validation Testing. Any  
23 Validation Testing shall be performed by a laboratory meeting at least one of the following  
24 standards: Environmental Laboratory Certification from the State of California, Department of  
25 Health Services, Environmental Laboratory Accreditation Program; NSF International; American

26 \_\_\_\_\_  
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. Settling Defendant shall conduct  
10 Validation testing every six (6) months. In the event that the Validation Testing demonstrates two  
11 (2) years of continuous compliance with the Reformulation Level by Settling Defendant for a  
12 Covered Product, Settling Defendant may send written notice to CEH and thereafter may cease  
13 Validation Testing for that type of Covered Product; provided however, if there is a material  
14 change in the type or level of ginger or molasses used in a Covered Product that is reasonably  
15 likely to affect the Lead levels in the product, then Settling Defendant shall arrange for testing for  
16 a minimum of two consecutive years after that change.

17                                   2.3.5       Covered Products That Exceed Reformulation Level. If a  
18 Validation Testing result indicates that a type of a Covered Product exceeds the Reformulation  
19 Level, Settling Defendant shall ensure that all Covered Products from the same production lot as  
20 those from which the sample of the Covered Product(s) that exceeded the Reformulation Level  
21 were drawn as well as other lots of the same type of Covered Product produced in the same  
22 calendar quarter that were not individually subject to Validation Testing (the “Non-Compliant  
23 Products”) will not be sold or offered for sale to California consumers. Notwithstanding the  
24 foregoing, if the results of Validation Testing of a sample of a type of Covered Product exceeds  
25 the Reformulation Level, Settling Defendant may collect up to three (3) more samples of the type  
26 of Covered Product from the same production lot and have those samples tested in accordance  
27 with Section 2.3. If the results of Validation Testing of all of the samples of a type of Covered  
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1 Product collectively yield an arithmetic mean of no more than thirty (30) ppb Lead by weight,  
2 Settling Defendant may treat that type of Covered Product as meeting the Reformulation Level for  
3 that Validation Testing cycle as long as no result for a sample exceeds fifty (50) ppb Lead, subject  
4 to the following confirmatory process. If a sample exceeds fifty (50) ppb Lead, Settling  
5 Defendant may collect three (3) more samples of the type of Covered Product from the same  
6 production lot and have those samples tested in accordance with Section 2.3. Provided that none  
7 of those additional test results exceed forty (40) ppb, those additional test results shall then be used  
8 in place of the sample that exceeded fifty (50) ppb in determining whether the arithmetic mean of  
9 Validation Test results for the Covered Product exceeded the Reformulation Level.

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

13 2.4 **Good Faith Commitment to Pursue Further Lead Reduction.** Except as  
14 provided in Section 2.5, Settling Defendant shall continue to take, or cause to be taken, good faith  
15 and commercially reasonable efforts to further reduce the Lead content of its Covered Products  
16 with a goal of Covered Products having a consistent Lead content of seventeen (17) ppb or less.  
17 These efforts shall include, at a minimum, efforts to further adjust recipes and formulas that will  
18 reduce Lead content in Covered Products and attempts to secure Covered Product ingredients such  
19 as molasses and ginger with lower Lead content. Within fifteen (15) days of the Reformulation  
20 Deadline, and annually thereafter for two (2) more years, Settling Defendant shall submit to CEH  
21 a written report of the activities it has undertaken to effectuate its good faith commitment under  
22 this paragraph. If Settling Defendant has test results demonstrating that all of its Covered  
23 Products have a consistent Lead content of seventeen (17) ppb or less and it provides such  
24 documentation to CEH, or if CEH and Settling Defendant otherwise agree in writing, then Settling  
25 Defendant need not submit any subsequent annual report to CEH pursuant to this paragraph.

26 2.5 **Products Not Subject to Testing.** The requirements of Section 2.3 and 2.4 shall  
27 not apply to any Covered Product for which CEH and Settling Defendant agree in writing that  
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1 such sections shall not apply to a particular Covered Product provided that Settling Defendant has  
2 no test results demonstrating lead levels above thirty (30) ppb on such Covered Product in its  
3 possession.

4 **3. ENFORCEMENT**

5 3.1 **General Enforcement Provisions.** CEH may, by motion or application for an  
6 order to show cause before this Court, enforce the terms and conditions contained in this Consent  
7 Judgment. Any action to enforce alleged violations of Section 2.2 by Settling Defendant shall be  
8 brought exclusively pursuant to this Section 3, and as applicable be subject to the meet and confer  
9 requirement of Section 3.2.4.

10 3.2 **Enforcement of Reformulation Commitment.**

11 3.2.1 Notice of Violation. In the event that CEH identifies a  
12 Covered Product that was sold or offered for sale to California consumers at any time following  
13 the Reformulation Deadline for which CEH has laboratory test results showing that the Covered  
14 Product has a Lead level exceeding the Reformulation Level, CEH may issue a Notice of  
15 Violation pursuant to this Section. Such Notice of Violation shall be based upon a test result  
16 sufficient to establish an exceedance of the Reformulation Level as it is to be evaluated under  
17 Section 2.3; the results employed shall also meet the sampling, testing, and laboratory criteria  
18 specified under Section 2.3.

19 3.2.2 Service of Notice of Violation and Supporting  
20 Documentation.

21 3.2.2.1 Subject to Section 3.2.1, the Notice of Violation shall  
22 be sent to the person(s) identified in Exhibit A to receive notices for Settling Defendant, and must  
23 be served within forty-five (45) days of the date the Covered Products at issue were purchased or  
24 otherwise acquired by CEH, provided, however, that CEH may have up to an additional forty-five  
25 (45) days to send the Notice of Violation if, notwithstanding CEH's good faith efforts, the test  
26 data required by Section 3.2.2.2 below cannot be obtained by CEH from its laboratory before  
27 expiration of the initial forty-five (45) 45 day period.

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1 may withdraw a Notice of Violation, in which case for purposes of this Section 3.2 the result shall  
2 be as if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of  
3 Violation results within 30 days of a Notice of Election to contest, CEH may file an enforcement  
4 motion or application pursuant to Section 3.1. In any such proceeding, CEH may seek whatever  
5 fines, costs, penalties, attorneys' fees or other remedies are provided by law for failure to comply  
6 with the Consent Judgment.

7                                   3.2.5           Non-Contested Matters. If Settling Defendant elects not to  
8 contest the allegations in a Notice of Violation, it shall identify on a confidential basis to CEH (by  
9 proper name, address of principal place of business and telephone number) the person or entity  
10 that sold the Covered Products to Settling Defendant and the manufacturer and other entities in the  
11 upstream chain of distribution of the Covered Product, provided that such information is  
12 reasonably available. In addition, Settling Defendant shall undertake corrective action and make  
13 payments, if any, as set forth below.

14                                   3.2.5.1           If the test data provided by CEH in support of the  
15 Notice of Violation reports a Lead content in a Covered Product above the Reformulation Level  
16 but less than sixty (60) ppb, then Settling Defendant shall take the following corrective action and  
17 make the following payments, if any:

18                                   A.           Settling Defendant shall include in its Notice of Election a  
19 detailed description with supporting documentation of the corrective action that it has undertaken  
20 or proposes to undertake to address the alleged violation. Any such correction shall, at a  
21 minimum, provide reasonable assurance that the Settling Defendant has stopped all Covered  
22 Products having the same lot number or lot identifier, such as "best by" or "sell by" date, as that of  
23 the Covered Products identified in CEH's Notice of Violation from being sold or offered for sale  
24 in California. Settling Defendant shall make available to CEH for inspection and/or copying  
25 records and correspondence regarding the corrective action. If there is a dispute over the  
26 corrective action, the Settling Defendant and CEH shall meet and confer pursuant to Section 3.2.4  
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1 before seeking any remedy in court. In no case shall CEH issue more than one NOV per  
2 manufacturing lot of a particular Covered Product.

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

17 3.2.5.2 If the test data provided by CEH in support of the  
18 Notice of Violation reports a Lead content in a Covered Product of more than sixty (60) ppb, then  
19 Settling Defendant shall take the following corrective action and make the following payments:

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

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

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

20                   3.2.6       Payments. Any payments under Section 3.2 shall be made  
21 by check payable to the “Lexington Law Group” and shall be paid within thirty (30) days of  
22 service of a Notice of Election triggering a payment and which shall be used as reimbursement for  
23 costs for investigating, preparing, sending and prosecuting Notices of Violation, and to reimburse  
24 attorneys’ fees and costs incurred in connection with these activities.

25                   3.3       **Repeat Violations.** If Settling Defendant has received four or more Notices of  
26 Violation that were not successfully contested or withdrawn in any twelve (12) month period then,  
27 at CEH’s option, CEH may seek whatever fines, costs, penalties, attorneys’ fees or other remedies

1 that are provided by law for failure to comply with the Consent Judgment. Prior to seeking such  
2 relief, CEH shall meet and confer with Settling Defendant for at least thirty (30) days to determine  
3 if Settling Defendant and CEH can agree on measures that Settling Defendant can undertake to  
4 prevent future violations.

5 **4. PAYMENTS**

6 4.1 **Payments by Settling Defendant.** Within five (5) days of the entry of this  
7 Consent Judgment, Settling Defendant shall pay amounts specified on Exhibit A.

8 4.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall  
9 be paid in four (4) separate checks and delivered as set forth below. Any failure by Settling  
10 Defendant to comply with the payment terms herein shall, at CEH's discretion, be subject to a  
11 stipulated late fee in the amount of \$100 for each day after the delivery date the payment is  
12 received. The late fees required under this Section shall be recoverable, together with reasonable  
13 attorneys' fees, in an enforcement proceeding brought pursuant to Section 3 of this Consent  
14 Judgment. The funds paid by Settling Defendant shall be allocated as set forth on Exhibit A  
15 between the following categories and made payable as follows:

16 4.2.1 A civil penalty pursuant to Health & Safety Code §  
17 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety  
18 Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental  
19 Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty  
20 payment shall be made payable to OEHHA and associated with taxpayer identification number 68-  
21 0284486. This payment shall be delivered as follows:

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

1 For Non-United States Postal Service Delivery:  
2 Attn: Mike Gyurics  
3 Fiscal Operations Branch Chief  
4 Office of Environmental Health Hazard Assessment  
5 1001 I Street, MS #19B  
6 Sacramento, CA 95814

7 The CEH portion of the civil penalty payment shall be made payable to the Center For  
8 Environmental Health and associated with taxpayer identification number 94-3251981. This  
9 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
10 94117.

11 4.2.2 A payment in lieu of civil penalty to CEH pursuant to Health  
12 & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH shall  
13 use such funds to continue its work educating and protecting people from exposures to toxic  
14 chemicals, including heavy metals. In addition, as part of its Community Environmental Action  
15 and Justice Fund, CEH will use four (4) percent of such funds to award grants to grassroots  
16 environmental justice groups working to educate and protect people from exposures to toxic  
17 chemicals. The method of selection of such groups can be found at the CEH web site at  
18 [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The payment pursuant to this Section shall be made payable to the  
19 Center For Environmental Health and associated with taxpayer identification number 94-3251981.  
20 This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,  
21 CA 94117.

22 4.2.3 A reimbursement of a portion of CEH's reasonable  
23 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made  
24 payable to the Lexington Law Group and associated with taxpayer identification number 94-  
25 3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San  
26 Francisco, CA 94117.

1     **5.     MODIFICATION AND DISPUTE RESOLUTION**

2             5.1     **Modification.** This Consent Judgment may be modified from time to time by  
3 express written agreement of the Parties, with the approval of the Court, or by an order of this  
4 Court upon motion and in accordance with law.

5             5.2     **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
6 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
7 modify the Consent Judgment.

8     **6.     CLAIMS COVERED AND RELEASE**

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

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

25             6.3     Compliance with the terms of this Consent Judgment by Settling Defendant shall  
26 constitute compliance with Proposition 65 by such Settling Defendant, its Defendant Releasees  
27

1 and its Downstream Defendant Releasees with respect to any alleged failure to warn about Lead in  
2 Covered Products manufactured, distributed or sold by Settling Defendant after the Effective Date.

3 **7. PROVISION OF NOTICE**

4 7.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
5 notice shall be sent by first class and electronic mail to:

6 Eric S. Somers  
7 Lexington Law Group  
8 503 Divisadero Street  
9 San Francisco, CA 94117  
10 esomers@lexlawgroup.com

11 7.2 When Settling Defendant is entitled to receive any notice under this Consent  
12 Judgment, the notice shall be sent by first class and electronic mail to the person(s) identified in  
13 Exhibit A.

14 7.3 Any Party may modify the person and address to whom the notice is to be sent by  
15 sending the other Party notice by first class and electronic mail.

16 **8. COURT APPROVAL**

17 8.1 This Consent Judgment shall become effective as a contract upon the date signed  
18 by CEH and Settling Defendant, whichever is later, provided however, that CEH shall also prepare  
19 and file a Motion for Approval of this Consent Judgment and Settling Defendant shall support  
20 approval of such Motion.

21 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect  
22 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

23 **9. GOVERNING LAW AND CONSTRUCTION**

24 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
25 California.

26 **10. ATTORNEYS' FEES**

27 10.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
28 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

1 Judgment, the term substantial justification shall carry the same meaning as used in the Civil  
2 Discovery Act of 1986, Code of Civil Procedure §§2016.010, et seq.

3 10.2 Notwithstanding Section 10.1, a Party who prevails in a contested enforcement  
4 action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of  
5 Civil Procedure §1021.5 against a Party that acted with substantial justification. The Party  
6 seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and this  
7 provision shall not be construed as altering any procedural or substantive requirements for  
8 obtaining such an award.

9 10.3 Nothing in this Section 10 shall preclude a party from seeking an award of  
10 sanctions pursuant to law.

11 **11. ENTIRE AGREEMENT**

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

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

2 12.1 For any report or information that Settling Defendant submits to CEH pursuant to  
3 this Consent Judgment, Settling Defendant may make such a submission subject to the terms of  
4 the protective order previously entered in this action and the protective order’s terms shall apply to  
5 the report or information as if it were still in effect.

6 **13. RETENTION OF JURISDICTION**

7 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
8 Consent Judgment.

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

10 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
11 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
12 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

14 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
15 against an entity that is not a Settling Defendant on terms that are different than those contained in  
16 this Consent Judgment.

17 **16. EXECUTION IN COUNTERPARTS**

18 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
19 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
20 constitute one document.

21 **IT IS SO ORDERED:**

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24 Dated: \_\_\_\_\_, 2015 \_\_\_\_\_  
25 Judge of the Superior Court  
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**IT IS SO STIPULATED:**

Dated: <u>Oct 23</u> , 2015	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>   _____ Signature  <u>CHARLIZE PIZZARO</u> _____ Printed Name  <u>ASSOCIATE DIRECTOR</u> _____ Title
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Dated: _____, 2015	<b>CONTINENTAL 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>OCTOBER 30</u> , 2015	<b>CONTINENTAL MILLS, INC.</b>   _____ Signature  <u>MICHAEL D. CASTLE</u> _____ Printed Name  <u>EVP/ CFO</u> _____ Title
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**EXHIBIT A**

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

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

Total Settlement Payment	\$ 110,000
Civil Penalty OEHHA Portion	\$ 10,950
Civil Penalty CEH Portion	\$ 3,650
Payment in Lieu of Civil Penalty	\$ 21,900
Attorneys' Fees and Costs	\$ 73,500

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

David Biderman  
Perkins Coie LLP  
1888 Century Park East, Suite 1700  
Los Angeles, CA 90067  
DBiderman@perkinscoie.com

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

**EXHIBIT B**

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**Laboratories Deemed To Comply with the Requirements of Section 2.3.2**

Curtis & Tompkins Laboratories

Covance Laboratories

Exova, Inc.

K Prime, Inc.

National Food Laboratory, Inc.

Silliker, Inc.