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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,)	[PROPOSED] CONSENT JUDGMENT
)	AS TO ACH FOOD COMPANIES, INC.
v.)	
)	
GENERAL MILLS, INC., <i>et al.</i> ;)	
)	
Defendants.)	
)	

1. INTRODUCTION

1.1 This Consent Judgment is entered into by Plaintiff Center for Environmental Health, a California non-profit corporation (“CEH”), and Defendant ACH Food Companies, Inc. (“Settling Defendant”). CEH and Settling Defendant are referred to collectively as the “Parties.” 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 (1) baking mix products that contain molasses, ginger, or both molasses and ginger (“Baking Mix Products”); and (2) baking ingredient products made with ginger that is processed with sugar or a sugar substitute (“Baking Ingredient Products”) sold by Settling Defendant that have been or will be sold or offered for sale to California consumers.

1 Baking Mix Products and Baking Ingredient Products are referred to collectively as “Covered
2 Products.”

3 1.2 On January 27, 2014, CEH served a 60-day Notice of Violation of Proposition 65
4 to the California Attorney General, to the District Attorneys of every county in California, to the
5 City Attorneys of every California city with a population greater than 750,000, and to Settling
6 Defendant. This Notice alleges that Settling Defendant violated Proposition 65 by exposing
7 persons in California to lead and lead compounds (“Lead”) in Baking Mix Products without first
8 providing a clear and reasonable Proposition 65 warning.

9 1.3 On May 16, 2014, CEH served a second 60-day Notice of Violation of Proposition
10 65 to the California Attorney General, to the District Attorneys of every county in California, to
11 the City Attorneys of every California city with a population greater than 750,000, and to Settling
12 Defendant. This Notice alleges that Settling Defendant violated Proposition 65 by exposing
13 persons in California to Lead in Baking Ingredient Products without first providing a clear and
14 reasonable Proposition 65 warning.

15 1.4 Settling Defendant is a corporation that manufactures, distributes, sells, or offers
16 for sale Covered Products that are sold or offered for sale to California consumers.

17 1.5 On August 23, 2013, CEH filed the Complaint in the matter captioned as *Center*
18 *for Environmental Health v. General Mills, Inc.* (Case No. RG 13-693015) (the “*General Mills*
19 *Action*”). On April 14, 2014, CEH amended the original Complaint in the *General Mills Action*
20 to add Settling Defendant as a named defendant.

21 1.6 The Parties wish to resolve all of CEH’s claims based on the 60-Day Notices in a
22 single Consent Judgment. Accordingly, upon entry of this Consent Judgment, the operative
23 Complaint in the *General Mills Action* shall be deemed amended as to Settling Defendant only,
24 such that the definition of Products in the Complaint shall include Baking Ingredient Products.

25 1.7 Settling Defendant represents that it has discontinued the manufacture and sale of
26 the specific Baking Mix Product that was identified as an exemplar in the January 27, 2014 60-
27 Day Notice of Violation referenced above.

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1 1.8 For purposes of this Consent Judgment only, the Parties stipulate that this Court
2 has jurisdiction over the allegations of violations contained in the Complaint and personal
3 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in
4 the County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a
5 full and final resolution of all claims which were or could have been raised in the Complaint
6 based on the facts alleged therein with respect to Covered Products manufactured, distributed,
7 offered for sale, or sold by Settling Defendant.

8 1.9 Nothing in this Consent Judgment is or shall be construed as an admission by the
9 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with
10 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
11 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
12 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
13 other pending or future legal proceedings. This Consent Judgment is the product of negotiation
14 and compromise and is accepted by the Parties solely for purposes of settling, compromising, and
15 resolving issues disputed in this Action.

16 **2. INJUNCTIVE RELIEF**

17 2.1 **Reformulation of Covered Products.** Settling Defendant¹ shall not purchase,
18 manufacture, have manufactured, ship, sell, or offer for sale any Covered Products that will be
19 sold or offered for sale to California consumers after June 15, 2016 that contain:

20 2.1.1 For Baking Mix Products: a concentration of more than thirty (30) parts
21 per billion (“ppb”) Lead by weight (the “Baking Mix Reformulation Level”); or

22 2.1.2 For Baking Ingredient Products: a concentration of more than forty (40)
23 ppb Lead by weight (the “Baking Ingredients Reformulation Level”). The Baking Mix
24 Reformulation Level and the Baking Ingredient Reformulation Level are referred to collectively as
25 the “Reformulation Levels”.

26 _____
27 ¹ The injunctive obligations set forth in Section 2.1 shall only apply to transactions and
28 conduct by Settling Defendant. Sales and offers for sale by Defendant Releasees and Downstream
29 Defendant Releasees (as defined in Section 6) are not enjoined by this requirement.

1 2.1.3 For purposes of this Consent Judgment, the concentration of Lead by
2 weight in Covered Products shall be determined by use of a test performed by an accredited
3 laboratory using inductively coupled plasma mass spectrometry (ICP-MS) equipment with a level
4 of detection of at least ten (10) ppb.

5 2.2 **Baking Mix Product Specification.** To the extent it has not already done so, no
6 more than thirty (30) days after the date of entry of this Consent Judgment, should Settling
7 Defendant purchase any Baking Mix Products from a third party that is not under common
8 ownership (a “Baking Mix Product Supplier”), Settling Defendant shall provide the Baking Mix
9 Reformulation Level to each Baking Mix Product Supplier and shall instruct each such Baking
10 Mix Product Supplier to provide it with Baking Mix Products that comply with the Baking Mix
11 Reformulation Level. If in the future Settling Defendant purchases Baking Mix Products from a
12 Baking Mix Product Supplier that it has not previously provided with instructions regarding the
13 Baking Mix Reformulation Level, Settling Defendant shall provide the Baking Mix
14 Reformulation Level to such Baking Mix Product Supplier prior to placing an initial order for
15 retail sale of Baking Mix Products and instruct the Baking Mix Product Supplier to provide it
16 with Baking Mix Products that comply with the Baking Mix Reformulation Level. Settling
17 Defendant shall retain and make available to CEH upon reasonable written request records of
18 communications sent to and received from Baking Mix Product Suppliers that are related to the
19 requirement of this Section 2.2 for a period of three (3) years from the date of entry of this
20 Consent Judgment (the “Effective Date”).

21 2.3 **Purchase of Baking Ingredient Products.** After the Effective Date, in addition
22 to the other requirements of this Section 2, Settling Defendant shall not purchase Baking
23 Ingredient Products or any other form of crystallized ginger from any entity unless that entity has
24 either: (a) entered into a Consent Judgment with CEH or the California Attorney General that
25 covers crystallized ginger and contains food quality auditing or control requirements; or (b)
26 Settling Defendant has received a written certification in the form attached hereto as Exhibit C
27 prior to shipment of any crystallized ginger from a food quality auditor stating that the auditor has
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1 audited the supplier and determined that the supplier has and continues to apply good
2 manufacturing practices to the acquisition, manufacture and processing of the Baking Ingredient
3 Products and that the supplier has taken steps to ensure that the Lead content of the finished
4 Baking Ingredient Products to be sold to the Settling Defendant are at the “lowest level currently
5 feasible” as such term is defined in 27 C.C.R. §25501(a)(4). Upon reasonable request by CEH,
6 Settling Defendant shall identify and make available to CEH documentation supporting
7 compliance with this Section 2.3.

8 2.4 **Testing.** To ensure compliance with Section 2.1, Settling Defendant shall conduct
9 random testing of Covered Products and take the follow-up actions described in this Section
10 (“Validation Testing”).

11 2.4.1 Covered Products To Be Tested. Settling Defendant shall perform
12 Validation Testing on samples drawn randomly from each production lot of each Covered
13 Product.

14 2.4.2 Methods of Testing. Prior to Settling Defendant’s first sale or
15 distribution of a Covered Product that will be sold or offered for sale to California consumers
16 after the Effective Date, Settling Defendant shall conduct Validation Testing pursuant to one of
17 the following methods: (1) the FDA sample preparation protocol discussed in the method entitled
18 “Elemental Analysis Manual: Section 4.4 Inductively Coupled Plasma-Atomic Emission
19 Spectrometric Determination of Elements in Food Using Microwave Assisted Digestion”² or (2) a
20 microwave- or heat-assisted acid digestion method employing high-purity reagents, provided that
21 the laboratory digests at least 0.5 grams of each sample taken from a properly homogenized
22 complete package of Covered Product, and analyzes each sample by ICP-MS.

23 2.4.3 Laboratories Conducting Validation Testing. Any Validation Testing
24 shall be performed by a laboratory meeting at least one of the following standards:
25 Environmental Laboratory Certification from the State of California, Department of Health

26 _____
27 ² The referenced FDA test protocol may be found at [http://www.fda.gov/Food/
28 FoodScienceResearch/LaboratoryMethods/ucm2006954.htm](http://www.fda.gov/Food/FoodScienceResearch/LaboratoryMethods/ucm2006954.htm).

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

10 2.4.4 Duration of Testing. Settling Defendant shall conduct Validation Testing
11 every six (6) months or upon production of a Covered Product, whichever is more frequent. In
12 the event that the Validation Testing demonstrates two (2) years of continuous compliance with
13 the Reformulation Level by Settling Defendant for a Covered Product, Settling Defendant may
14 send written notice to CEH and thereafter may cease Validation Testing for that Covered Product;
15 provided, however, if there is a material change in the type or level of ginger or molasses used in
16 such Covered Product that is reasonably likely to affect the Lead levels in that Covered Product,
17 then Settling Defendant shall arrange for testing for a minimum of two (2) consecutive years after
18 that change for such Covered Product.

19 2.4.5 Covered Products That Exceed Reformulation Level. If a Validation
20 Testing result indicates that a Covered Product exceeds the applicable Reformulation Level,
21 Settling Defendant shall ensure that all Covered Products from the same production lot as those
22 from which the sample of the Covered Product(s) that exceeded the Reformulation Level were
23 drawn (the “Non-Compliant Products”) will not be sold or offered for sale to California
24 consumers. Notwithstanding the foregoing, if the results of Validation Testing of a sample of a
25 Covered Product exceeds the Reformulation Level, Settling Defendant may collect up to three (3)
26 more samples of the Covered Product from the same production lot and have those samples tested
27 in accordance with Section 2.4. If the results of Validation Testing of all of the samples of a
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1 Covered Product collectively yield an arithmetic mean of no more than the applicable
2 Reformulation Level for that type of Covered Product, Settling Defendant may treat that Covered
3 Product as meeting the Reformulation Level for that Validation Testing cycle as long as no result
4 for a sample exceeds twenty (20) ppb Lead above the applicable Reformulation Level, subject to
5 the following confirmatory process. If a sample exceeds twenty (20) ppb Lead above the
6 applicable Reformulation Level, Settling Defendant may collect three (3) more samples of the
7 Covered Product from the same production lot and have those samples tested in accordance with
8 Section 2.4. Provided that none of those additional test results exceed ten (10) ppb Lead above
9 the applicable Reformulation Level, those additional test results shall then be used in place of the
10 sample that exceeded twenty (20) ppb Lead above the applicable Reformulation Level in
11 determining whether the arithmetic mean of Validation Test results for the Covered Product
12 exceeded the applicable Reformulation Level.

13 2.4.6 Records. The testing reports and results of the Validation Testing
14 performed pursuant to this Consent Judgment shall be retained by Settling Defendant for four (4)
15 years and made available to CEH upon reasonable request.

16 **3. ENFORCEMENT**

17 3.1 **General Enforcement Provisions.** CEH may, by motion or application for an
18 order to show cause before this Court, enforce the terms and conditions contained in this Consent
19 Judgment. Any action to enforce alleged violations of Section 2.1 by Settling Defendant shall be
20 brought exclusively pursuant to this Section 3, and as applicable be subject to the meet and confer
21 requirement of Section 3.2.4.

22 3.2 **Enforcement of Reformulation Commitment.**

23 3.2.1 Notice of Violation. In the event that CEH identifies a Covered Product
24 that was sold or offered for sale to California consumers at any time following the Effective Date
25 for which CEH has at least two laboratory test results on individual units showing that the
26 Covered Product has a Lead level exceeding the applicable Reformulation Level, CEH may issue
27 a Notice of Violation pursuant to this Section.

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1 3.2.2 Service of Notice of Violation and Supporting Documentation.

2 3.2.2.1 Subject to Section 3.2.1, the Notice of Violation shall be sent
3 to the person(s) identified in Exhibit A to receive notices for Settling Defendant, and must be
4 served within forty-five (45) days of the date the Covered Products at issue were purchased or
5 otherwise acquired by CEH, provided, however, that CEH may have up to an additional forty-five
6 (45) days to send the Notice of Violation if, notwithstanding CEH’s good faith efforts, the test
7 data required by Section 3.2.2.2 below cannot be obtained by CEH from its laboratory before
8 expiration of the initial forty-five (45) day period. In addition, if CEH cannot reasonably
9 determine from the product packaging that Settling Defendant was involved in sale of the
10 Covered Product, the forty-five (45) day period shall not start to run until such time as CEH
11 determines that Settling Defendant was so involved.

12 3.2.2.2 The Notice of Violation shall, at a minimum, set
13 forth: (a) the date the alleged violation was observed; (b) the location at which the Covered
14 Products were offered for sale; (c) a description of the Covered Products giving rise to the alleged
15 violation, including the name and address of the retail entity from which the sample was obtained
16 and, if available, information that identifies the product lot, such as the “best by” or “sell by”
17 date; and (d) all test data obtained by CEH regarding the Covered Products and supporting
18 documentation sufficient for validation of the test results, including any laboratory reports,
19 quality assurance reports, and quality control reports associated with testing of the Covered
20 Products.

21 3.2.3 Notice of Election of Response. No more than thirty (30) days after
22 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to
23 CEH whether it elects to contest the allegations contained in a Notice of Violation (“Notice of
24 Election”). Failure to provide a Notice of Election within thirty (30) days of effectuation of
25 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.

26 3.2.3.1 If a Notice of Violation is contested, the Notice of Election
27 shall include all then-available documentary evidence regarding the alleged violation, including

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1 all test data, if any. If Settling Defendant or CEH later acquires additional test or other data
2 regarding the alleged violation, it shall notify the other party and promptly provide all such data
3 or information to the party.

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

17 3.2.5 Non-Contested Matters. If Settling Defendant elects not to contest the
18 allegations in a Notice of Violation, it shall identify on a confidential basis to CEH (by proper
19 name, address of principal place of business, and telephone number) the person or entity that sold
20 the Covered Products to Settling Defendant and the manufacturer and other entities in the
21 upstream chain of distribution of the Covered Product, provided that such information is
22 reasonably available. In addition, Settling Defendant shall undertake corrective action and make
23 payments, if any, as set forth below.

24 3.2.5.1 Unless the conditions of Section 3.2.5.2 apply, Settling
25 Defendant shall take the following corrective action and make the following payments, if any:

26 A. Settling Defendant shall include in its Notice of Election a
27 detailed description with supporting documentation of the corrective action that it has undertaken

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1 or proposes to undertake to address the alleged violation. Any such correction shall, at a
2 minimum, provide reasonable assurance that Settling Defendant has stopped all Covered Products
3 having the same lot number or lot identifier, such as “best by” or “sell by” date, as that of the
4 Covered Products identified in CEH’s Notice of Violation from being sold or offered for sale in
5 California. Settling Defendant shall make available to CEH for inspection and/or copying records
6 and correspondence regarding the corrective action. If there is a dispute over the corrective
7 action, Settling Defendant and CEH shall meet and confer pursuant to Section 3.2.4 before
8 seeking any remedy in court. In no case shall CEH issue more than one Notice of Violation per
9 manufacturing lot of a particular Covered Product.

10 B. If the Notice of Violation is the first Notice of Violation
11 received by Settling Defendant under Section 3.2.5.1 that was not successfully contested or
12 withdrawn, no payment shall be required by Settling Defendant. If the Notice of Violation is the
13 second, third, or fourth Notice of Violation received by Settling Defendant under Section 3.2.5.1
14 that was not successfully contested or withdrawn, Settling Defendant shall pay \$5,000 for each
15 Notice of Violation. If Settling Defendant has received more than four Notices of Violation
16 under Section 3.2.5.1 that were not successfully contested or withdrawn, Settling Defendant shall
17 pay \$10,000 for each subsequent Notice of Violation. If Settling Defendant produces with its
18 Notice of Election test data from the manufacturer or supplier of the Covered Product that: (i)
19 was conducted prior to the date CEH purchased the Covered Product that is the subject of the
20 Notice of Violation; (ii) was conducted on Covered Product that was from the same production
21 lot as the Covered Product that is the subject of the Notice of Violation; and (iii) consistently
22 demonstrates Lead levels below the applicable Reformulation Level in Section 2.1, then any
23 payment under this Section shall be decreased by fifty (50) percent.

24 3.2.5.2 If two or more test results provided by CEH in support of the
25 Notice of Violation reports a Lead content in a Covered Product of more than sixty (60) ppb for
26 Baking Mix Products and seventy (70) ppb for Baking Ingredient Products, then Settling
27 Defendant shall take the following corrective action and make the following payments:

1 A. Settling Defendant shall include in its Notice of Election a
2 detailed description with supporting documentation of the corrective action that it has undertaken
3 or proposes to undertake to address the alleged violation. Any such correction shall, at a
4 minimum, provide reasonable assurance that all Covered Products having the same lot number or
5 lot identifier, such as “best by” or “sell by” date, as that of the Covered Product identified in
6 CEH’s Notice of Violation (the “Noticed Covered Products”) will not be thereafter sold or
7 offered for sale to California consumers, that the Noticed Covered Products are removed from the
8 California market, and that Settling Defendant has sent instructions to any of its stores and/or
9 customers that offer the Noticed Covered Products for sale to cease offering the Noticed Covered
10 Products for sale to California consumers and to either return all such Noticed Covered Products
11 to Settling Defendant for destruction or to directly destroy such Noticed Covered Products.
12 Settling Defendant shall keep and make available to CEH for inspection and copying records and
13 correspondence regarding the market withdrawal and destruction of the Noticed Covered
14 Products. If there is a dispute over the corrective action, Settling Defendant and CEH shall meet
15 and confer pursuant to Section 3.2.4 before seeking any remedy in court. In no case shall CEH
16 issue more than one Notice of Violation per manufacturing lot of Covered Product.

17 B. If the Notice of Violation is the first, second, third, or fourth
18 Notice of Violation received by Settling Defendant under Section 3.2.5.2 that was not
19 successfully contested or withdrawn, that Settling Defendant shall pay \$16,000 for each Notice of
20 Violation. If Settling Defendant has received more than four Notices of Violation under Section
21 3.2.5.2 that were not successfully contested or withdrawn, Settling Defendant shall pay \$24,000
22 for each Notice of Violation. If Settling Defendant produces with its Notice of Election test data
23 on the Covered Product that: (i) was conducted prior to the date CEH purchased the Covered
24 Product that is the subject of the Notice of Violation; (ii) was conducted on Covered Product that
25 was from the same production lot as the Covered Product that is the subject of the Notice of
26 Violation; and (iii) demonstrates Lead levels below the applicable Reformulation Level in Section
27 2.1, then any payment under this Section shall be decreased by fifty (50) percent.

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1 3.2.6 Payments. Any payments under Section 3.2 shall be made by check
2 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a
3 Notice of Election triggering a payment and which shall be used as reimbursement for costs for
4 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse
5 attorneys’ fees and costs incurred in connection with these activities.

6 3.3 **Repeat Violations.** If Settling Defendant has received four or more Notices of
7 Violation that were not successfully contested or withdrawn in any twelve (12) month period
8 then, at CEH’s option, CEH may seek whatever fines, costs, penalties, attorneys’ fees, or other
9 remedies that are provided by law for failure to comply with the Consent Judgment. Prior to
10 seeking such relief, CEH shall meet and confer with Settling Defendant for at least thirty (30)
11 days to determine if Settling Defendant and CEH can agree on measures that Settling Defendant
12 can undertake to prevent future violations.

13 **4. PAYMENTS**

14 4.1 **Payments by Settling Defendant.** Within ten (10) days of the entry of this
15 Consent Judgment, Settling Defendant shall pay the amounts specified on Exhibit A.

16 4.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall
17 be paid in four (4) separate checks and delivered as set forth below. Any failure by Settling
18 Defendant to comply with the payment terms herein shall, at CEH’s discretion, be subject to a
19 stipulated late fee in the amount of \$100 for each day after the delivery due date that the payment
20 is not received. The late fees required under this Section shall be recoverable, together with
21 reasonable attorneys’ fees, in an enforcement proceeding brought pursuant to Section 3 of this
22 Consent Judgment. The funds paid by Settling Defendant shall be allocated as set forth on
23 Exhibit A between the following categories and made payable as follows:

24 4.2.1 A civil penalty pursuant to Health & Safety Code §25249.7(b). The civil
25 penalty payment shall be apportioned in accordance with Health & Safety Code §25249.12 (25%
26 to CEH and 75% to the State of California’s Office of Environmental Health Hazard Assessment
27 (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty payment shall be made

1 payable to OEHHA and associated with taxpayer identification number 68-0284486. This
2 OEHHA payment shall be delivered as follows:

3 For United States Postal Service Delivery:
4 Attn: Mike Gyurics
5 Fiscal Operations Branch Chief
6 Office of Environmental Health Hazard Assessment
7 P.O. Box 4010, MS #19B
8 Sacramento, CA 95812-4010

9 For Non-United States Postal Service Delivery:
10 Attn: Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 1001 I Street, MS #19B
14 Sacramento, CA 95814

15 The CEH portion of the civil penalty payment shall be made payable to the Center for
16 Environmental Health and associated with taxpayer identification number 94-3251981. This
17 CEH payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,
18 CA 94117.

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

4.2.3 A reimbursement of a portion of CEH's reasonable attorneys' fees and
costs. The attorneys' fees and cost reimbursement check shall be made payable to the Lexington
Law Group and associated with taxpayer identification number 94-3317175. This payment shall
be delivered to Lexington Law Group, 503 Divisadero Street, San 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
13 to which Settling Defendant directly or indirectly distributes or sells Covered Products, including
14 but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and
15 licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on
16 failure to warn about alleged exposure to Lead contained in Covered Products that were sold,
17 distributed, or offered for sale by 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 and its Downstream Defendant Releasees with respect to any alleged failure to warn about Lead

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1 in Covered Products manufactured, distributed, or sold by Settling Defendant after the Effective
2 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
19 prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall
20 support approval of such Motion.

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

24 **9. GOVERNING LAW AND CONSTRUCTION**

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

27 **10. ATTORNEYS' FEES**

28 10.1 A Party that 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

1 unless the unsuccessful Party has acted with substantial justification. For purposes of this
2 Consent Judgment, the term “substantial justification” shall carry the same meaning as used in the
3 Civil Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

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

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

12 **11. ENTIRE AGREEMENT**

13 11.1 This Consent Judgment contains the sole and entire agreement and understanding
14 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
15 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
16 and therein. There are no warranties, representations, or other agreements between the Parties
17 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
18 other than those specifically referred to in this Consent Judgment have been made by any Party
19 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
20 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
21 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
22 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
23 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
24 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
25 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
26 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 the *General Mills* Action, and the Protective Order’s
5 terms shall apply to 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 Settling Defendant on terms that are different from those contained in
16 this Consent Judgment.

17 **16. EXECUTION IN COUNTERPARTS**

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

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IT IS SO ORDERED:

Dated: _____, 2016

Judge of the Superior Court

IT IS SO STIPULATED:

<p>Dated: <u>1 APRIL</u>, 2016</p>	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p>_____ Signature</p> <p><u>CAROL PIZZANO</u> Printed Name</p> <p><u>ASSOCIATE DIRECTOR</u> Title</p>
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<p>Dated: _____, 2016</p>	<p>ACH FOOD COMPANIES, INC.</p> <p>_____ Signature</p> <p>_____ Printed Name</p> <p>_____ Title</p>
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IT IS SO ORDERED:

Dated: _____, 2016

Judge of the Superior Court

IT IS SO STIPULATED:

<p>Dated: _____, 2016</p>	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p>_____ Signature</p> <p>_____ Printed Name</p> <p>_____ Title</p>
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<p>Dated: <u>MARCH 28</u>, 2016</p>	<p>ACH FOOD COMPANIES, INC.</p> <p><u>Stephen P. Zaruba</u> Signature</p> <p><u>STEPHEN P. ZARUBA</u> Printed Name</p> <p><u>CFO</u> Title</p>
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EXHIBIT A

Settling Defendant: ACH Food Companies, Inc.

Defendant's Settlement Payment and Allocation:

Total Settlement Payment	\$ 100,000
Civil Penalty OEHHA Portion	\$ 9,600
Civil Penalty CEH Portion	\$ 3,200
Payment in Lieu of Civil Penalty	\$ 19,200
Attorneys' Fees and Costs	\$ 68,000

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

William Tarantino
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482
wtarantino@mofo.com

ACH Food Companies, Inc.
Office of General Counsel
7171 Goodlett Farms Parkway
Cordova, TN 38016
bkichler@achfood.com

EXHIBIT B

Laboratories Deemed To Comply with the Requirements of Section 2.4.3

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Curtis & Tompkins Laboratories

Covance Laboratories

Eurofins

Exova, Inc.

K Prime, Inc.

National Food Laboratory, Inc.

EXHIBIT C

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2 1. Food Quality Auditor. “Food Quality Auditor” or “Auditor” shall mean an
3 independent auditor or auditing company, foreign or domestic, that (i) has extensive knowledge
4 of good manufacturing practices in the food processing industry; (ii) has sufficient experience in
5 inspecting food processing facilities to ensure compliance with good manufacturing practices
6 and with the Hazard Analysis and Critical Control Points (“HAACP”) food safety management
7 system; (iii) is qualified as an International HACCP Alliance lead Instructor, SQF HACCP Lead
8 Auditor or SQF Consultant, or Certified Food Scientist by Institute of Food Technology or holds
a NEHA Certified Professional -Food Safety (CP-FS) Credential, or has similar qualifications or
credentials. Food Processing Auditor shall also mean an employee of Settling Defendant who (i)
has been trained in good manufacturing practices in the food processing industry; and (ii) has
sufficient experience in inspecting food processing facilities to ensure compliance with good
manufacturing practices and with the HAACP food safety management system.

9 2. HACCP Program. The Auditor will certify that the Company has a HACCP
10 program in place that identifies lead as a hazard and implements prevention steps to minimize
the presence of lead in Baking Ingredient Products.

11 3. Other Lead Safeguards. The Auditor will certify that the following safeguards are
12 in place:

13 a. Potable Water Supply. The potable water supply is monitored for lead
14 levels. The internal distribution system is not a source of lead contamination as verified by point
of use testing versus influent lead level. The lead levels in potable water used in processing
15 contains no more than 0.010 mg/L.

16 b. Food Contact Surfaces. All food contact equipment utensils, containers
17 are constructed from lead-free materials. No brass or bronze components may come in contact
with ingredients or the final product.

18 c. Lubricants/Sealants, Etc. Lubricants, sealants and similar materials used
19 in direct food contact areas, as well as in areas that have the potential to contaminate product, are
food grade. This included storage areas in addition to processing and packing areas.

20 d. Packaging materials. Packaging materials, inks, and pigments with any
21 contact to the product have no intentionally added lead that was introduced into the package or
packaging component during manufacturing or distribution.

22 e. Process control. Process control is validated through an audit program
23 whereby processes and finished product is subjected to periodic testing for total lead content.

24 f. Lot identification/Traceability. Lot identification and traceability is
25 maintained for major and minor ingredients and processing aids. The manufacturer is able to
document the major and minor ingredients lots used to produce specific finished product lots and
26 to trace finished product shipments one level forward to the customer.

27 g. Testing Program for Final Product. The company has a program in place
28 to test Representative Samples of the product as required by this Consent Judgment.

1 h. Standard GMPs. The Company has in place Good Manufacturing
Practices for the Product, that include the following, which are continuously in place:

- 2 i. Specifications are established for controlled manufacturing steps.
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- 4 ii. Master manufacturing records and batch production records are
prepared and maintained
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- 6 iii. Standard Operating Procedures (SOPs) are prepared to cover the
quality control operations, including the calibration and control of
equipment and instruments used in manufacturing.

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8 4. Lead Contribution Exercise. The Auditor will conduct a “Lead Contribution
Exercise” to evaluate the contribution of lead from each ingredient or processing material that is
reasonably likely to contribute lead in concentrations of 2 ppb or more to the finished Product.
9 Based on this Exercise, the Auditor will establish maximum lead concentrations for each
ingredient (e.g., ginger, sugar, salt, etc.) and processing material (e.g., brining salt, preservatives,
10 coloring agents, processing aids, and substances used to dry, preserve or otherwise process the
Products), that can contribute 2 ppb or more lead to the final product. The lead concentrations
11 that the Auditor establishes as part of this Exercise must be designed to result in a finished
Product that has a lead concentration of no more than the Baking Ingredient Reformulation
12 Level.

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14 5. Controls on lead content in ingredients and processing materials. The Auditor will
identify each raw ingredient or processing material that may, based on the Lead Contribution
15 Exercise, contribute more than 5 ppb of lead to the finished product. The company will ensure
that the lead concentrations in such ingredients and processing materials do not exceed the lead
16 levels established in the Lead Contribution Exercise, by taking one of the following steps:

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18 a. Request from its suppliers and maintain a certificate of analysis specific to
lead for each raw ingredient and processing material that may, based on the Lead Contribution
19 Exercise, contribute more than 5 ppb of lead to the finished product. These certificates of
analysis must indicate that the lead levels in Representative Samples of each such ingredient or
20 processing material do not exceed the maximum lead concentrations set forth in the Lead
Contribution Exercise.

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22 b. Implement a system to pre-approve each supplier of any ingredient or
processing material that may, based on the Lead Contribution Exercise, contribute more than 5
23 ppb of lead to the finished product. Such a pre-approved supplier must show that it has process
controls and lead prevention programs in place to ensure that the lead levels in its products do
24 not exceed the maximum lead concentrations set forth in the Lead Contribution Exercise for the
applicable ingredient or processing material.

25 or

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27 c. Implement systematic testing of representative samples of the ingredient
or processing material.

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6. Testing conducted pursuant to this paragraph 4 shall be conducted at a Qualified Laboratory. "Representative samples" of an ingredient shall mean: (a) the square root, rounded to the nearest whole number, of the number of lots of the ingredient used in the Baking Ingredient Product in the preceding calendar year; or (b) a statistically representative number of the lots of that ingredient, as determined by the supplier of that ingredient; or (c) each lot of the ingredient.