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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] AMENDED CONSENT
)	JUDGMENT AS TO CONTINENTAL
v.)	MILLS, INC.
)	
GENERAL MILLS, INC., <i>et al.</i> ;)	
)	
Defendants.)	
)	
)	

1. INTRODUCTION

1.1 Upon entry, this Amended Consent Judgment shall supersede in its entirety the Consent Judgment entered in this case on January 7, 2016 as to Continental Mills, Inc. (the “Consent Judgment”). Until this Amended Consent Judgment is entered by the Court, the Consent Judgment shall remain in effect.

1.2 The Parties to this Amended 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 Amended 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 Amended Consent Judgment covers baking mix products

1 that contain molasses, ginger, or both molasses and ginger (“Covered Products”) sold by Settling
2 Defendant that have been or will be sold or offered for sale to California consumers.

3 1.3 On January 27, 2014, CEH served a 60-day Notice of Violation of Proposition 65
4 to the California Attorney General, the District Attorneys of every county in California, the City
5 Attorneys of every California city with a population greater than 750,000, and to Settling
6 Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons to lead
7 and lead compounds (“Lead”) contained in Covered Products without first providing a clear and
8 reasonable Proposition 65 warning.

9 1.4 Settling Defendant is a corporation or other business entity that manufactures,
10 distributes, sells or offers for sale Covered Products that are sold or offered for sale or has done
11 so in the past.

12 1.5 On August 23, 2013, CEH filed the Complaint in the above-captioned matter. On
13 April 14, 2014, the original complaint was amended to add Settling Defendant as named
14 defendant.

15 1.6 For purposes of this Amended Consent Judgment only, CEH and Settling
16 Defendant (the “Parties”) stipulate that this Court has jurisdiction over the allegations of
17 violations contained in the Complaint and personal jurisdiction over each Settling Defendant as to
18 the acts alleged in the Complaint, that venue is proper in the County of Alameda, and that this
19 Court has jurisdiction to enter this Amended Consent Judgment as a full and final resolution of all
20 claims which were or could have been raised in the Complaint based on the facts alleged therein
21 with respect to Covered Products manufactured, distributed, offered for sale or sold by Settling
22 Defendant.

23 1.7 Nothing in this Amended Consent Judgment is or shall be construed as an
24 admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall
25 compliance with the Amended Consent Judgment constitute or be construed as an admission by
26 the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this
27 Amended Consent Judgment shall prejudice, waive or impair any right, remedy, argument or
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1 defense the Parties may have in any other pending or future legal proceedings. This Amended
2 Consent Judgment is the product of negotiation and compromise and is accepted by the Parties
3 solely for purposes of settling, compromising, and resolving issues disputed in this Action.

4 **2. INJUNCTIVE RELIEF**

5 2.1 **Specification Compliance Date.** To the extent it has not already done so, no
6 more than thirty (30) days after the date of entry of the Consent Judgment (the “Effective Date”),
7 any Settling Defendant that purchases any Covered Products from a third party that is not under
8 common ownership (a “Covered Product Supplier”) shall provide the Reformulation Level set
9 forth in Section 2.2 to each Covered Product Supplier and shall instruct each such Covered
10 Product Supplier to provide it with Covered Products that comply with the Reformulation Level
11 set forth in Section 2.2. If in the future Settling Defendant purchases Covered Products from a
12 Covered Product Supplier that it has not previously provided with instructions regarding the
13 Reformulation Level set forth in Section 2.2, Settling Defendant shall provide the Reformulation
14 Level set forth in Section 2.2 to such Covered Product Supplier prior to placing an initial order
15 for Covered Products and instruct the Covered Product Supplier to provide it with Covered
16 Products that comply with the Reformulation Level set forth in Section 2.2. Settling Defendant
17 shall retain and make available to CEH upon reasonable written request records of
18 communications sent to and received from Covered Product Suppliers that are related to the
19 requirement of this Section 2.1 for a period of five (5) years from the Effective Date.

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

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1 2.3 **Interim Warning Option.** Notwithstanding anything to the contrary in Section
2 2.2 above, Settling Defendant may, as an alternative to meeting the Reformulation Level,
3 manufacture, ship, sell or offer for sale the Trader Joe’s Gingerbread Cake & Baking Mix, SKU
4 No. 0091-3980 Covered Product, manufactured by Settling Defendant in September of 2016 (the
5 “Trader Joe’s Warning Products”), to California consumers in Trader Joe’s retail locations in
6 California until March 1, 2017, provided that: (i) such Trader Joe’s Warning Products contain a
7 concentration of no more than fifty (50) parts per billion (“ppb”) Lead by weight; and (ii) such
8 Trader Joe’s Warning Products are accompanied by a Clear and Reasonable Warning that
9 complies with the provisions of this Section. Within 10 days of production, Settling Defendant
10 shall provide the lot identification codes for any products manufactured pursuant to this Section
11 2.3.

12 2.3.1 **Proposition 65 Warnings.** A Clear and Reasonable Warning for the
13 Trader Joe’s Covered Product under this Amended Consent Judgment shall state:

14 **CALIFORNIA PROPOSITION 65 WARNING:** The Trader Joe’s
15 Gingerbread Cake & Baking Mix on this shelf contains lead, a chemical
16 known to the State of California to cause cancer and birth defects or other
17 reproductive harm.

18 This statement shall be prominently displayed on a placard or sign, provided that the statement is
19 displayed with such conspicuousness, as compared with other words, statements or designs as to
20 render it likely to be read and understood by an ordinary individual prior to sale. The warning
21 placard or sign must enable an ordinary individual to easily determine which specific Covered
22 Products the warning applies to, and to differentiate between the Trader Joe’s Covered Product
23 and other products to which the warning statement does not apply. On or before the Effective
24 Date, Settling Defendant shall send (or ensure that Trader Joe’s sends) a letter to each Trader
25 Joe’s California store manager in the form attached hereto as Exhibit C informing each retail
26 store that the warning statement must appear at the store on a clearly visible sign, posted
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1 immediately adjacent to or on the shelf(s) displaying the Trader Joe’s Covered Product, in 36
2 point type. A copy of a shelf sign satisfying this criteria is attached hereto as Exhibit D.

3 2.4 **Testing.** Except as provided in Section 2.6, to ensure compliance with Section
4 2.2, Settling Defendant shall conduct random testing of Covered Products and take the follow-up
5 actions described in this section (“Validation Testing”), provided however, that if Settling
6 Defendant purchases Covered Products from another Settling Defendant, only the Settling
7 Defendant that sold the Covered Products to the other Settling Defendant need perform
8 Validation Testing on those Covered Products.

9 2.4.1 Covered Products To Be Tested. The Covered Products to
10 be tested shall be for each type of Covered Product Settling Defendant manufactures or arranges
11 to be manufactured. Such Validation Testing shall be performed on samples drawn randomly
12 from each production lot of each type of Covered Product. For purposes of this Amended
13 Consent Judgment a “type” of a Covered Product is either an individual Covered Product as
14 identified by SKU or other product identifier or one which CEH and Settling Defendant have
15 agreed has materially the same characteristics based on the type, supplier and amount of ginger
16 and/or molasses used in its recipe or formula.

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

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

1 instrument quantitation limit corresponding to less than three (3) micrograms of Lead in the
2 finished product.

3 2.4.3 Laboratories Conducting Validation Testing. Any
4 Validation Testing shall be performed by a laboratory meeting at least one of the following
5 standards: Environmental Laboratory Certification from the State of California, Department of
6 Health Services, Environmental Laboratory Accreditation Program; NSF International; American
7 Association for Laboratory Accreditation for Chemical Testing; International Standards
8 Organization/IEC via ANSI-ASQ; or an in-house laboratory or other facility experienced in
9 testing for lead levels in foods that complies with the Production and Process Control System;
10 Requirements for Laboratory Operations set forth in 21 C.F.R. Part 111, Subpart J, including but
11 not limited to the requirements for written procedures, requirements for laboratory control
12 processes, requirements for laboratory methods and examination, record retention policies, and
13 other laboratory requirements. Laboratories deemed to meet these requirements are listed on
14 Exhibit B.

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

23 2.4.5 Covered Products That Exceed Reformulation Level. If a
24 Validation Testing result indicates that a type of a Covered Product exceeds the Reformulation
25 Level, Settling Defendant shall ensure that all Covered Products from the same production lot as
26 those from which the sample of the Covered Product(s) that exceeded the Reformulation Level
27 were drawn as well as other lots of the same type of Covered Product produced in the same
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1 calendar quarter that were not individually subject to Validation Testing (the “Non-Compliant
2 Products”) will not be sold or offered for sale to California consumers. Notwithstanding the
3 foregoing, if the results of Validation Testing of a sample of a type of Covered Product exceeds
4 the Reformulation Level, Settling Defendant may collect up to three (3) more samples of the type
5 of Covered Product from the same production lot and have those samples tested in accordance
6 with Section 2.4. If the results of Validation Testing of all of the samples of a type of Covered
7 Product collectively yield an arithmetic mean of no more than thirty (30) ppb Lead by weight,
8 Settling Defendant may treat that type of Covered Product as meeting the Reformulation Level
9 for that Validation Testing cycle as long as no result for a sample exceeds fifty (50) ppb Lead,
10 subject to the following confirmatory process. If a sample exceeds fifty (50) ppb Lead, Settling
11 Defendant may collect three (3) more samples of the type of Covered Product from the same
12 production lot and have those samples tested in accordance with Section 2.4. Provided that none
13 of those additional test results exceed forty (40) ppb, those additional test results shall then be
14 used in place of the sample that exceeded fifty (50) ppb in determining whether the arithmetic
15 mean of Validation Test results for the Covered Product exceeded the Reformulation Level.

16 2.4.6 Records. The testing reports and results of the Validation
17 Testing performed pursuant to this Amended Consent Judgment shall be retained by Settling
18 Defendant for four (4) years and made available to CEH upon reasonable request.

19 2.5 **Good Faith Commitment to Pursue Further Lead Reduction.** Except as
20 provided in Section 2.6, Settling Defendant shall continue to take, or cause to be taken, good faith
21 and commercially reasonable efforts to further reduce the Lead content of its Covered Products
22 with a goal of Covered Products having a consistent Lead content of seventeen (17) ppb or less.
23 These efforts shall include, at a minimum, efforts to further adjust recipes and formulas that will
24 reduce Lead content in Covered Products and attempts to secure Covered Product ingredients
25 such as molasses and ginger with lower Lead content. Within fifteen (15) days of the Effective
26 Date, and annually thereafter for two (2) more years, Settling Defendant shall submit to CEH a
27 written report of the activities it has undertaken to effectuate its good faith commitment under
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1 this paragraph. If Settling Defendant has test results demonstrating that all of its Covered
2 Products have a consistent Lead content of seventeen (17) ppb or less and it provides such
3 documentation to CEH, or if CEH and Settling Defendant otherwise agree in writing, then
4 Settling Defendant need not submit any subsequent annual report to CEH pursuant to this
5 paragraph.

6 2.6 **Products Not Subject to Testing.** The requirements of Section 2.4 and 2.5 shall
7 not apply to any Covered Product for which CEH and Settling Defendant agree in writing that
8 such sections shall not apply to a particular Covered Product provided that Settling Defendant has
9 no test results demonstrating lead levels above thirty (30) ppb on such Covered Product in its
10 possession.

11 **3. ENFORCEMENT**

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

17 3.2 **Enforcement of Reformulation Commitment.**

18 3.2.1 Notice of Violation. In the event that CEH identifies a
19 Covered Product that was sold or offered for sale to California consumers at any time following
20 the Effective Date for which CEH has laboratory test results showing that the Covered Product
21 has a Lead level exceeding the Reformulation Level, CEH may issue a Notice of Violation
22 pursuant to this Section. Such Notice of Violation shall be based upon a test result sufficient to
23 establish an exceedance of the Reformulation Level as it is to be evaluated under Section 2.4; the
24 results employed shall also meet the sampling, testing, and laboratory criteria specified under
25 Section 2.4.

26 3.2.2 Service of Notice of Violation and Supporting
27 Documentation.

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1 data or information to the party. Any test data used to contest a Notice of Violation shall meet
2 the criteria of Section 2.4.

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

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

23 3.2.5.1 If the test data provided by CEH in support of the
24 Notice of Violation reports a Lead content in a Covered Product above the Reformulation Level
25 but less than sixty (60) ppb, then Settling Defendant shall take the following corrective action and
26 make the following payments, if any:

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

12 B. If the Notice of Violation is the first Notice of Violation
13 received by Settling Defendant under Section 3.2.5.1 that was not successfully contested or
14 withdrawn, no payment shall be required by Settling Defendant. If the Notice of Violation is the
15 second, third or fourth Notice of Violation received by a Settling Defendant under Section 3.2.5.1
16 that was not successfully contested or withdrawn, Settling Defendant shall pay \$5,000 for each
17 Notice of Violation. If Settling Defendant has received more than four Notices of Violation
18 under Section 3.2.5.1 that were not successfully contested or withdrawn, Settling Defendant shall
19 pay \$10,000 for each subsequent Notice of Violation. If Settling Defendant produces with its
20 Notice of Election Test Data from the manufacturer or supplier of the Covered Product that: (i)
21 was conducted prior to the date CEH purchased the Covered Product that is the subject of the
22 Notice of Violation; (ii) was conducted on Covered Product that was from the same
23 manufacturing lot as the Covered Product that is the subject of the Notice of Violation; and (iii)
24 consistently demonstrates Lead levels below the Reformulation Level as evaluated under Section
25 2.3, then any payment under this Section shall be decreased by fifty percent.

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1 of Covered Product; and (iii) demonstrates Lead levels below the Reformulation Level as
2 evaluated under Section 2.3.4, then any payment under this Section shall be decreased by fifty
3 percent.

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

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

16 4. PAYMENTS

17 4.1 **Payments by Settling Defendant**. Within five (5) days of the entry of this
18 Amended Consent Judgment, Settling Defendant shall pay the amounts for the additional
19 payment as specified on Exhibit A. CEH and Settling Defendant acknowledge that Settling
20 Defendant previously paid the Initial Settling Payments set forth on Exhibit A.

21 4.2 **Allocation of Payments**. The total additional settlement amount for Settling
22 Defendant shall be paid in four (4) separate checks and delivered as set forth below. Any failure
23 by Settling Defendant to comply with the payment terms herein shall, at CEH’s discretion, be
24 subject to a stipulated late fee in the amount of \$100 for each day after the delivery date the
25 payment is received. The late fees required under this Section shall be recoverable, together with
26 reasonable attorneys’ fees, in an enforcement proceeding brought pursuant to Section 3 of this
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1 Amended Consent Judgment. The funds paid by Settling Defendant shall be allocated as set forth
2 on Exhibit A between the following categories and made payable as follows:

3 4.2.1 A civil penalty pursuant to Health & Safety Code §
4 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety
5 Code § 25249.12 (25% to CEH and 75% to the State of California’s Office of Environmental
6 Health Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty
7 payment shall be made payable to OEHHA and associated with taxpayer identification number
8 68-0284486. This payment shall be delivered as follows:

9 For United States Postal Service Delivery:
10 Attn: Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 P.O. Box 4010, MS #19B
14 Sacramento, CA 95812-4010

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

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

25 4.2.2 A payment in lieu of civil penalty to CEH pursuant to
26 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b).
27 CEH shall use such funds to continue its work educating and protecting people from exposures to
28 toxic chemicals, including heavy metals. In addition, as part of its Community Environmental
Action and Justice Fund, CEH will use four (4) percent of such funds to award grants to
grassroots environmental justice groups working to educate and protect people from exposures to
toxic chemicals. The method of selection of such groups can be found at the CEH web site at
www.ceh.org/justicefund. The payment pursuant to this Section shall be made payable to the

1 Center For Environmental Health and associated with taxpayer identification number 94-
2 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
3 Francisco, CA 94117.

4 4.2.3 A reimbursement of a portion of CEH's reasonable
5 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
6 payable to the Lexington Law Group and associated with taxpayer identification number 94-
7 3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
8 Francisco, CA 94117.

9 **5. MODIFICATION AND DISPUTE RESOLUTION**

10 5.1 **Modification.** This Amended Consent Judgment may be modified from time to
11 time by express written agreement of the Parties, with the approval of the Court, or by an order of
12 this Court upon motion and in accordance with law.

13 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Amended Consent
14 Judgment shall attempt in good faith to meet and confer with all affected Parties prior to filing a
15 motion to modify the Amended Consent Judgment.

16 **6. CLAIMS COVERED AND RELEASE**

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

26 6.2 CEH, for itself, its agents, successors and assigns, releases, waives, and forever
27 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream
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1 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
2 common law claims that have been or could have been asserted by CEH individually or in the
3 public interest regarding the failure to warn about exposure to Lead arising in connection with
4 Covered Products manufactured, distributed or sold by Settling Defendant prior to the Effective
5 Date.

6 6.3 Compliance with the terms of this Amended Consent Judgment by Settling
7 Defendant shall constitute compliance with Proposition 65 by such Settling Defendant, its
8 Defendant Releasees and its Downstream Defendant Releasees with respect to any alleged failure
9 to warn about Lead in Covered Products manufactured, distributed or sold by Settling Defendant
10 after the Effective Date.

11 **7. PROVISION OF NOTICE**

12 7.1 When CEH is entitled to receive any notice under this Amended Consent
13 Judgment, the notice shall be sent by first class and electronic mail to:

14 Eric S. Somers
15 Lexington Law Group
16 503 Divisadero Street
17 San Francisco, CA 94117
18 esomers@lexlawgroup.com

19 7.2 When Settling Defendant is entitled to receive any notice under this Amended
20 Consent Judgment, the notice shall be sent by first class and electronic mail to the person(s)
21 identified in Exhibit A.

22 7.3 Any Party may modify the person and address to whom the notice is to be sent by
23 sending the other Party notice by first class and electronic mail.

24 **8. COURT APPROVAL**

25 8.1 This Amended Consent Judgment shall become effective as a contract upon the
26 date signed by CEH and Settling Defendant, whichever is later, provided however, that CEH
27 shall also prepare and file a Motion for Approval of this Amended Consent Judgment and
28 Settling Defendant shall support approval of such Motion.

1 8.2 If this Amended Consent Judgment is not entered by the Court, it shall be of no
2 force or effect and shall not be introduced into evidence or otherwise used in any proceeding for
3 any purpose.

4 **9. GOVERNING LAW AND CONSTRUCTION**

5 9.1 The terms of this Amended Consent Judgment shall be governed by the laws of
6 the State of California.

7 **10. ATTORNEYS' FEES**

8 10.1 A Party who unsuccessfully brings or contests an action arising out of this
9 Amended Consent Judgment shall be required to pay the prevailing Party's reasonable attorneys'
10 fees and costs unless the unsuccessful Party has acted with substantial justification. For purposes
11 of this Amended Consent Judgment, the term substantial justification shall carry the same
12 meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§2016.010, et seq.

13 10.2 Notwithstanding Section 10.1, a Party who prevails in a contested enforcement
14 action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of
15 Civil Procedure §1021.5 against a Party that acted with substantial justification. The Party
16 seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and this
17 provision shall not be construed as altering any procedural or substantive requirements for
18 obtaining such an award.

19 10.3 Nothing in this Section 10 shall preclude a party from seeking an award of
20 sanctions pursuant to law.

21 **11. ENTIRE AGREEMENT**

22 11.1 This Amended Consent Judgment contains the sole and entire agreement and
23 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
24 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
25 merged herein and therein. There are no warranties, representations, or other agreements
26 between the Parties except as expressly set forth herein. No representations, oral or otherwise,
27 express or implied, other than those specifically referred to in this Amended Consent Judgment

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1 have been made by any Party hereto. No other agreements not specifically contained or
2 referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.
3 Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to
4 exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated
5 herein. No supplementation, modification, waiver, or termination of this Amended Consent
6 Judgment shall be binding unless executed in writing by the Party to be bound thereby. No
7 waiver of any of the provisions of this Amended Consent Judgment shall be deemed or shall
8 constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such
9 waiver constitute a continuing waiver.

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

11 12.1 For any report or information that Settling Defendant submits to CEH pursuant to
12 this Amended Consent Judgment, Settling Defendant may make such a submission subject to the
13 terms of the protective order previously entered in this action and the protective order's terms
14 shall apply to the report or information as if it were still in effect.

15 **13. RETENTION OF JURISDICTION**

16 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
17 Amended Consent Judgment.

18 **14. AUTHORITY TO STIPULATE TO AMENDED CONSENT JUDGMENT**

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

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

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

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16. EXECUTION IN COUNTERPARTS

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

IT IS SO ORDERED:

Dated: _____, 2016 _____
Judge of the Superior Court

IT IS SO STIPULATED:

Dated: <u>16 SEPT</u> , 2016	<p>CENTER FOR ENVIRONMENTAL HEALTH</p>  <p>_____ Signature</p> <p><u>CHARLIE PIZARRO</u> Printed Name</p> <p><u>ASSOCIATE DIRECTOR</u> Title</p>
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Dated: _____, 2016

CONTINENTAL MILLS, INC.



Signature

Michael O. Casco

Printed Name

EVP/CFO

Title

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EXHIBIT A

Settling Defendant: Continental Mills, Inc.

Defendant's Initial Settlement Payment and Allocations (already paid):

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

Defendant's Additional Settlement Payment and Allocations:

Total Settlement Payment	\$ 40,000
Civil Penalty OEHHA Portion	\$ 3,186
Civil Penalty CEH Portion	\$ 1,062
Payment in Lieu of Civil Penalty	\$ 8,242
Attorneys' Fees and Costs	\$ 27,510

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

Breana 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 2.3.2

Curtis & Tompkins Laboratories

Covance Laboratories

Exova, Inc.

K Prime, Inc.

National Food Laboratory, Inc.

Silliker, Inc.

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EXHIBIT C

Letter of Instruction to Trader Joe’s Store Managers

IMPORTANT LEGAL NOTICE

Date:
Attention: All California Trader Joe’s Store Managers
Subject: California Proposition 65 Warnings

This letter is to advise you that the Trader Joe’s Gingerbread Cake and Baking Mix (the “TJ’s Gingerbread Product”) product contains lead, a chemical known to the State of California to cause cancer and reproductive toxicity.

Before placing any of the TJ’s Gingerbread Product on your store shelves or completing any retail sales of the TJ’s Gingerbread Products, you must take certain actions to ensure that purchasers of the Products receive Proposition 65 warnings.

You will be in compliance with Proposition 65 for the Products if you affix the enclosed shelf signs to all areas where the TJ’s Gingerbread Products are offered for sale. The shelf signs must be displayed directly on the shelf where the TJ’s Gingerbread Product are offered for sale such that they are conspicuous and likely to be read and understood by an ordinary individual under customary conditions of purchase. The shelf signs must also enable an ordinary individual to easily determine that the warning applies to the specific TJ’s Gingerbread Product, and to differentiate between those products and other products to which the warning statement does not apply.

Failure to provide a Proposition 65 warning for the Products may subject Trader Joe’s to legal action by the California Attorney General or any person acting in the public interest, wherein monetary penalties of up to \$2,500 per violation may be sought.

Should you have any questions or concerns about this matter, please do not hesitate to contact [] at [] by phone, or by mail at the above address. In addition, we will be glad to supply additional shelf signs if requested.

Sincerely,

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Exhibit D

Sample Shelf Sign

Must be at least 36 pt font

