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11 CENTER FOR ENVIRONMENTAL HEALTH

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

14 CENTER FOR ENVIRONMENTAL
15 HEALTH,

16 Plaintiff,

17 v.

18 REED'S, INC. DBA REED'S GINGER
19 PRODUCTS; and DOES 1 through 100,
20 inclusive,

21 Defendants.

Case No. RG-14739997

**[PROPOSED] CONSENT
JUDGMENT AS TO DEFENDANT
REED'S, INC. DBA REED'S
GINGER PRODUCTS**

22 **1. INTRODUCTION**

23 1.1 This Consent Judgment is entered into by the Center For Environmental Health
24 ("CEH"), a California non-profit corporation, and Reed's, Inc. dba Reed's Ginger Products
25 ("Defendant") to settle certain claims asserted by CEH against Defendant as set forth in the
26 operative complaint in the matter entitled *Center for Environmental Health v. Reed's, Inc. dba
27 Reed's Ginger Products, et al.*, Alameda County Superior Court Case No. RG-14739997 (the
28 "Action"). CEH and Defendant are referred to collectively as the "Parties."

1.2. On June 26, 2014, CEH served a 60-Day Notice of Violation (the "Notice") pursuant
to the California Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") on

1 Defendant, the California Attorney General, the District Attorneys of every County in the State of
2 California, and the City Attorneys for every City in the State of California with a population greater
3 than 750,000. The Notice alleges violations of Proposition 65 with respect to the alleged presence
4 of 4-methylimidazole (“4-MEI”) in certain carbonated soft drinks containing caramel coloring
5 manufactured, distributed, and/or sold by Defendant (hereinafter, “Covered Products”).

6 1.3. Defendant is a corporation that employs ten (10) or more persons, and that
7 manufactures, distributes, and/or sells Covered Products in the State of California.

8 1.4. For purposes of this Consent Judgment only, the Parties stipulate that this Court has
9 jurisdiction over the allegations of violations contained in CEH’s Complaint in this Action (the
10 “Complaint”) and personal jurisdiction over Defendant as to the acts alleged in CEH’s Complaint,
11 that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this
12 Consent Judgment as a full and final resolution of all claims which were or could have been raised
13 in the Notice and Complaint based on the facts alleged therein.

14 1.5. CEH and Defendant enter into this Consent Judgment as a full and final settlement of
15 all claims that were raised in the Notice and Complaint, or that could have been raised in the Notice
16 and Complaint, arising out of the facts or conduct alleged therein. By execution of this Consent
17 Judgment and agreeing to comply with its terms, the Parties do not admit any facts or conclusions
18 of law including, but not limited to, any facts or conclusions of law suggesting or demonstrating any
19 violations of Proposition 65 or any other statutory, common law, or equitable requirements.
20 Nothing in this Consent Judgment is or shall be construed as an admission by the Parties of any fact,
21 conclusion of law, issue of law, or violation of law, nor shall compliance with the Consent
22 Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law,
23 issue of law, or violation of law. Defendant denies the material factual and legal allegations in
24 CEH’s Complaint, expressly denies any wrong doing whatsoever, and maintains that all products it
25 sells are in compliance with all laws including Proposition 65, and are completely safe for their
26 intended use. Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
27 remedy, argument, or defense the Parties may have in this or any other pending or future legal
28 proceedings. This Consent Judgment is the product of negotiation and compromise and is accepted

1 by the Parties solely for purposes of settling, compromising, and resolving issues disputed in this
2 Action.

3 **2. INJUNCTIVE RELIEF**

4 2.1 Defendant shall comply with the following requirements to eliminate alleged
5 exposures to 4-MEI arising from the consumption of the Covered Products:

6 2.1.1. **Reformulation of Covered Products.** As of the date of entry of this
7 Consent Judgment (the “Effective Date”), Defendant shall not manufacture, distribute, sell, or offer
8 for sale in California any Covered Product manufactured on or later than the Effective Date unless
9 such Covered Product contains no more than 81 parts per billion (“ppb”) 4-MEI.

10 2.1.2. **Interim Compliance.** Any Covered Product that is manufactured before the
11 Effective Date that contains in excess of 81 ppb 4 MEI, and which is distributed, sold, or offered for
12 sale by Defendant in California after the Effective Date shall be accompanied by a Clear and
13 Reasonable Warning on each retail unit that complies with Section 2.1.4.

14 2.1.3. **Warnings for Products in the Stream of Commerce.** In an effort to ensure
15 that consumers receive clear and reasonable warnings in compliance with Proposition 65 for
16 Covered Products that have not been reformulated pursuant to Section 2.1.1 or labeled in
17 accordance with Section 2.1.2, within 30 days following the Effective Date, Defendant shall provide
18 warning materials by certified mail to each of its California retailers or distributors to whom
19 Defendant reasonably believes it sold Covered Products that contained or may have contained 4-
20 MEI in excess of 81 ppb, and that Defendant reasonably believes may still hold inventory of such
21 product for sale in California. Such warning materials shall include a reasonably sufficient number
22 of stickers in order to permit the retailer or distributor to place a warning sticker on each retail unit
23 of Covered Product such customer has purchased from Defendant for sale in California. The
24 stickers shall contain the warning language set forth in Section 2.1.4. The warning materials shall
25 also include a letter of instruction for the placement of the stickers on Covered Products.

26 2.1.4. **Proposition 65 Warnings.** A Clear and Reasonable Warning under this
27 Consent Judgment shall state:
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1 California Proposition 65 WARNING: This product contains 4-methylimidazole (“4-
2 MEI”), a chemical known to the State of California to cause cancer.

3 A Clear and Reasonable Warning shall not be preceded by, surrounded by, or include any additional
4 words or phrases that contradict, obfuscate, or otherwise undermine the warning. The warning
5 statement shall be prominently displayed on each retail unit of the Covered Product containing in
6 excess of 81 ppb 4 MEI, or the packaging of each retail unit of the Covered Product, with such
7 conspicuousness, as compared with other words, statements, or designs, as to render it likely to be
8 read and understood by an ordinary individual prior to sale. For internet, catalog, or any other sale
9 where the consumer is not physically present and cannot see a warning displayed on the Covered
10 Product or the packaging of the Covered Product containing in excess of 81 ppb 4 MEI prior to
11 purchase or payment, the warning statement shall be displayed in such a manner that it is likely to
12 be read and understood prior to the authorization of or actual payment.

13 3. PENALTIES AND PAYMENT

14 3.1 Within ten (10) days following the Effective Date, Defendant shall pay the total sum
15 of \$45,000 as a settlement payment, which shall be allocated as set forth in Sections 3.1.1-3.1.3
16 below. With the exception of the payment to OEHHA described in 3.1.1, the payments required
17 under Sections 3.1.1-3.1.3 shall be delivered to Mark Todzo at Lexington Law Group at the address
18 set forth in Section 7.

19 3.1.1. \$4,590 shall constitute a penalty pursuant to Cal. Health & Safety Code §
20 25249.7(b), such money to be apportioned by CEH in accordance with Cal. Health & Safety Code §
21 25249.12. Of this amount, \$3,442.50 (75%) shall be made payable to the Office of Environmental
22 Health Hazard Assessment and associated with taxpayer identification number 68-0284486.

23 This payment shall be delivered as follows:

24 For United States Postal Service Delivery:

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

1 The remaining payment required under this Section 3.1.1 of \$1,147.50 shall be made payable to
2 CEH and delivered to Mark Todzo as set forth above.

3 3.1.2. \$6,885 shall constitute a payment in lieu of civil penalty pursuant to Cal.
4 Health & Safety Code § 25249.7(b) and 11 C.C.R. § 3202(b). CEH will use such funds to continue
5 its work of educating and protecting the public from exposures to toxic chemicals. CEH may also
6 use a portion of such funds to monitor compliance with this Consent Judgment and to purchase and
7 test Defendant's products to confirm compliance. In addition, as part of its Community
8 Environmental Action and Justice Fund, CEH will use four percent (4%) of such funds to award
9 grants to grassroots environmental justice groups working to educate and protect the public from
10 exposures to toxic chemicals. The method of selection of such groups can be found at the CEH
11 website at www.ceh.org/justicefund. The payment required under this Section 3.1.2 shall be made
12 payable to CEH.

13 3.1.3. \$33,525 shall constitute reimbursement of CEH's reasonable attorneys' fees
14 and costs. Of this, \$4,275 shall be made payable to CEH and \$29,250 shall be made payable to
15 Lexington Law Group.

16 **4. ENFORCEMENT OF CONSENT JUDGMENT**

17 4.1. CEH may, by motion or application for an order to show cause before the Superior
18 Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment.
19 Prior to bringing any motion or application to enforce the requirements of Section 2 above, CEH
20 shall provide Defendant with a Notice of Violation of the terms of this Consent Judgment and a
21 copy of any test results which purportedly support CEH's Notice of Violation. The Parties shall
22 then meet and confer regarding the basis for CEH's anticipated motion or application in an attempt
23 to resolve it informally, including providing Defendant a reasonable opportunity of at least thirty
24 (30) days to cure any alleged violation and/or present evidence to CEH as to why there is no
25 violation. Should such attempts at informal resolution fail, CEH may file its enforcement motion or
26 application. The prevailing party on any motion to enforce this Consent Judgment shall be entitled
27 to its reasonable attorney's fees and costs incurred as a result of such motion or application. This
28 Consent Judgment may only be enforced by the Parties.

1 **5. MODIFICATION OF CONSENT JUDGMENT**

2 5.1. This Consent Judgment may only be modified by written agreement of CEH and
3 Defendant, or upon motion of CEH or Defendant as provided by law.

4 **6. CLAIMS COVERED AND RELEASE**

5 6.1. This Consent Judgment is a full, final, and binding resolution between CEH acting in
6 the public interest, and Defendant and Defendant’s parents, officers, directors, shareholders,
7 divisions, subdivisions, subsidiaries, and their respective successors and assigns (“Defendant
8 Releasees”), and all entities to whom they distribute or sell or have distributed or sold Covered
9 Products including, but not limited to, distributors, wholesalers, customers, retailers, franchisees,
10 cooperative members, and licensees (“Downstream Defendant Releasees”), of all claims alleged in
11 the Notice and Complaint in this Action arising from any alleged violations of Proposition 65 that
12 have been or could have been asserted in the public interest against Defendant and Downstream
13 Defendant Releasees, regarding the alleged failure to warn about exposure to 4-MEI in the Covered
14 Products manufactured, distributed, or sold by Defendant prior to the Effective Date.

15 6.2. CEH, for itself and its agents, , hereby releases, waives, and forever discharges
16 any and all claims alleged in the Notice and Complaint against Defendant and Downstream
17 Defendant Releasees arising from any violation of Proposition 65 that have been or could have been
18 asserted regarding the failure to warn about alleged exposure to 4-MEI in connection with Covered
19 Products manufactured, distributed, or sold by Defendant prior to the Effective Date.

20 6.3. CEH, on its own behalf, and not in the public interest, releases Kerry Inc. dba
21 Kerry Ingredients Inc. and Mastertaste Inc. (“Kerry”), and its parents, officers, directors,
22 shareholders, divisions, subdivisions, subsidiaries, and their respective successors and assigns, from
23 any Proposition 65 claims for any alleged exposures to 4-MEI resulting from the caramel coloring
24 supplied to Defendant by Kerry that was used by Defendant in Covered Products manufactured
25 prior to the Effective Date. This release does not extend to any other supplier of caramel coloring to
26 Defendant, nor to any caramel coloring Kerry may have supplied to customers other than
27 Defendant.
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1 6.4. Compliance with the terms of this Consent Judgment by Defendant shall
2 constitute compliance with Proposition 65 by Defendant and Downstream Defendant Releases
3 with respect to any alleged failure to warn about 4-MEI in Covered Products manufactured,
4 distributed, or sold by Defendant after the Effective Date.

5 **7. PROVISION OF NOTICE**

6 7.1. When any Party is entitled to receive any notice under this Consent Judgment, the
7 notice shall be sent by certified first class and electronic mail as follows:

8 7.1.1. **Notices to Defendant.** The person(s) for Defendant to receive notices
9 pursuant to this Consent Judgment shall be:

10 Chis Reed
11 President
12 Reed's Inc.
13 13000 South Spring Street
14 Los Angeles, CA 90061

15 With Copy To:

16 J. Robert Maxwell
17 Rogers Joseph O'Donnell
18 311 California Street, 10th fl
19 San Francisco, CA 94104

20 7.1.2. **Notices to Plaintiff.** The person(s) for CEH to receive notices pursuant to
21 this Consent Judgment shall be:

22 Mark Todzo
23 Lexington Law Group
24 503 Divisadero Street
25 San Francisco, CA 94117
26 mtodzo@lexlawgroup.com

27 7.2. Any Party may modify the person and address to whom the notice is to be sent by
28 sending the other Parties notice by both first class and electronic mail.

1 **8. COURT APPROVAL**

2 8.1. This Consent Judgment shall become effective on the Effective Date, provided
3 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
4 Defendant shall support approval of such Motion.

5 8.2. If this Consent Judgment is not entered by the Court, it shall be of no force or effect
6 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

7 **9. GOVERNING LAW AND CONSTRUCTION**

8 9.1. The terms and obligations arising from this Consent Judgment shall be construed and
9 enforced in accordance with the laws of the State of California.

10 **10. ENTIRE AGREEMENT**

11 10.1. This Consent Judgment contains the sole and entire agreement and understanding of
12 CEH and Defendant with respect to the entire subject matter hereof, and any and all prior
13 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
14 merged herein.

15 10.2. There are no warranties, representations, or other agreements between CEH and
16 Defendant with respect to the subject matter hereof except as expressly set forth herein. No
17 representations, oral or otherwise, express or implied, other than those specifically referred to in this
18 Consent Judgment have been made by any Party hereto with respect to the subject matter hereof.

19 10.3. No other agreements with respect to the subject matter hereof not specifically
20 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
21 Parties hereto.

22 10.4. No supplementation, modification, waiver, or termination of this Consent Judgment
23 shall be binding unless executed in writing by the Party to be bound thereby, or unless ordered by
24 the Court.

25 10.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or
26 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such
27 waiver constitute a continuing waiver.
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11. RETENTION OF JURISDICTION

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

12. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

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

13. NO EFFECT ON OTHER SETTLEMENTS

13.1. Nothing in this Consent Judgment shall preclude CEH from resolving any claim against another entity on terms that are different from those contained in this Consent Judgment.

14. EXECUTION IN COUNTERPARTS

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

IT IS SO STIPULATED:

Dated: Aug 14, 2014 ^{CEH} CENTER FOR ENVIRONMENTAL HEALTH



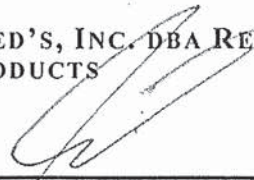
CATALIE PIZARRO
Printed Name

ASSOCIATE DIRECTOR
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Dated: 8/6/15, ~~2014~~

REED'S, INC. DBA REED'S GINGER PRODUCTS



CHARLES REED
Printed Name

CEO
Title

IT IS SO ORDERED, ADJUDGED,
AND DECREED:

Dated: _____, 2015

Judge of the Superior Court of the State of
California, County of Alameda