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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

CENTER FOR ENVIRONMENTAL HEALTH,)	Case No. CGC-12-526396
)	
Plaintiff,)	[PROPOSED] CONSENT JUDGMENT
)	AS TO EUROMARKET DESIGNS,
v.)	INC.
)	
FAYEON DISTRIBUTORS, INC., <i>et al.</i> ,)	
)	
)	
Defendants.)	
)	
)	

1. INTRODUCTION

1.1 The Parties to this Consent Judgment are the Center For Environmental Health, a California non-profit corporation (“CEH”), and Euromarket Designs, Inc. (“Settling Defendant”). The Parties enter into this Consent Judgment to settle certain claims asserted by CEH against Settling Defendant as set forth in the operative complaint (“Complaint”) in the above-captioned matter. This Consent Judgment covers the lead content of ginger snack foods that are or were

1 processed with sugar or salt (“Covered Products”) sold or offered for sale by Settling Defendant.

2 1.2 On August 22, 2014, CEH served a 60-day Notice of Violation under Proposition
3 65, alleging that Settling Defendant violated Proposition 65 by exposing persons to lead and lead
4 compounds (“Lead”) contained in Covered Products without first providing a clear and reasonable
5 Proposition 65 warning.

6 1.3 Settling Defendant is a corporation that sells or offers for sale Covered Products
7 that are offered for sale in the State of California or has done so in the past.

8 1.4 On November 27, 2012, CEH filed the original Complaint in this matter. On
9 December 20, 2012, CEH filed the operative First Amended Complaint in this matter. On May
10 11, 2015, CEH amended the First Amended Complaint to add additional named defendants,
11 including Settling Defendant.

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

19 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the
20 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with
21 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
22 conclusion of law, issue of law, or violation of law except as expressly stated herein. This
23 Consent Judgment is the product of negotiation and compromise and is accepted by the Parties
24 solely for purposes of settling, compromising, and resolving issues disputed in this Action.

25 **2. INJUNCTIVE RELIEF**

26 2.1 **Specification Compliance Date.** To the extent it has not already done so, no more
27 than fifteen (15) days after the date Plaintiff serves notice of entry of this Consent Judgment on

1 Settling Defendant (“Effective Date”), if Settling Defendant has sold Covered Products in
2 California in the past and purchased Covered Products from a third party, Settling Defendant shall
3 provide the reformulation specification set forth in Section 2.2 to each supplier of Covered
4 Products and shall instruct each such Covered Products supplier to provide it with Covered
5 Products that comply with the reformulation specification set forth in Section 2.2. If in the future
6 Settling Defendant purchases Covered Products from a new third party that it has not previously
7 provided with instructions regarding the reformulation specification set forth in Section 2.2,
8 Settling Defendant shall provide the reformulation specification set forth in Section 2.2 prior to
9 placing an initial order for Covered Products and instruct the new Covered Products supplier to
10 provide it with Covered Products that comply with the reformulation specification set in Section
11 2.2. Settling Defendant shall retain records of communications sent to and received from
12 suppliers that are related to the requirement of this Section 2.1 for a period of five years from the
13 Effective Date.

14 **2.2 Reformulation of Covered Products.** After the Effective Date, Settling
15 Defendant shall not purchase, manufacture, ship, sell or offer for sale any Covered Product that
16 Settling Defendant knows or reasonably should know will be sold or offered for sale in California
17 that contains a concentration of more than seventeen (17) parts per billion (“ppb”) Lead by weight,
18 such concentration to be determined by use of a test performed by an accredited laboratory using
19 inductively coupled plasma mass spectrometry (ICP-MS) equipment with a level of detection of at
20 least ten (10) ppb that meets standard laboratory QA/QC requirements (the “Reformulation
21 Level”). Subject to Section 7 below, no allocation is made for naturally occurring Lead in food
22 pursuant to 27 Cal. Code of Regs. § 25501.

23 **2.3 Market Withdrawal of Covered Products.** On or before the Effective Date,
24 Settling Defendant shall: (i) cease shipping the specific Covered Products identified on Exhibit A
25 (the “Noticed Covered Products”) to stores and/or customers in California; (ii) withdraw the
26 Noticed Covered Products from the market in California; and (iii) send instructions to any of its
27 stores and/or customers that offer the Noticed Covered Products for sale in California to cease

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1 offering such Noticed Covered Products for sale and to either return all Noticed Covered Products
2 to Settling Defendant for destruction, or to directly destroy the Noticed Covered Products. Any
3 destruction of the Noticed Covered Products by Settling Defendant shall be in compliance with all
4 applicable laws. Settling Defendant shall keep and make available to CEH for inspection and
5 copying records and correspondence regarding the market withdrawal and destruction of the
6 Noticed Covered Products. If there is a dispute over the corrective action, the Parties shall meet
7 and confer before seeking any remedy in court.

8 2.4 **Supplier and Product Information.** CEH acknowledges that Settling Defendant
9 has provided full and complete information and supporting documentation as to each Covered
10 Product as further specified on Exhibit B. Settling Defendant shall cooperate and work in good
11 faith to promptly answer any follow-up questions or requests for supporting documentation from
12 CEH about the information and documents to be provided pursuant to this section.

13 **3. ENFORCEMENT**

14 3.1 **Enforcement Procedures.** Prior to bringing any motion or order to show cause to
15 enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the violating
16 party thirty (30) days advanced written notice of the alleged violation. The Parties shall meet and
17 confer during such thirty (30) day period, exchanging any relevant information, in an effort to try
18 to reach agreement absent Court intervention. After such thirty (30) day period, the Party seeking
19 to enforce may, by new action, motion or order to show cause before the Superior Court of San
20 Francisco, seek to enforce the terms and conditions contained in this Consent Judgment.

21 **4. PAYMENTS**

22 4.1 **Payments by Settling Defendants.** Within five (5) days of the entry of the
23 Effective Date, Settling Defendant shall pay the sum set forth on Exhibit A as further set forth in
24 this Section and on Exhibit A.

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

6 4.2.1 A civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil
7 penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12 (25%
8 to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment
9 ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment for the amount
10 designated for Settling Defendant on Exhibit A as "Civil Penalty OEHHA Portion" shall be made
11 payable to OEHHA and associated with taxpayer identification number 68-0284486. This
12 payment shall be delivered as follows:

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

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

21 The CEH portion of the civil penalty payment for the amount designated for Settling
22 Defendant on Exhibit A as "Civil Penalty CEH Portion" shall be made payable to the Center For
23 Environmental Health and associated with taxpayer identification number 94-3251981. This
24 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
25 94117.

26 4.2.2 A payment in lieu of civil penalty to CEH pursuant to Health & Safety
27 Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH shall use such

1 funds to continue its work educating and protecting people from exposures to toxic chemicals,
2 including heavy metals. In addition, as part of its Community Environmental Action and Justice
3 Fund, CEH will use four percent of such funds to award grants to grassroots environmental justice
4 groups working to educate and protect people from exposures to toxic chemicals. The method of
5 selection of such groups can be found at the CEH web site at www.ceh.org/justicefund. The
6 payment pursuant to this Section shall be made payable to the Center For Environmental Health
7 and associated with taxpayer identification number 94-3251981.

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

12 **5. MODIFICATION AND DISPUTE RESOLUTION**

13 5.1 **Modification.** This Consent Judgment may be modified from time to time by
14 express written agreement of the Parties, with the approval of the Court, or by an order of this
15 Court upon motion and in accordance with law.

16 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
17 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
18 modify the Consent Judgment.

19 **6. CLAIMS COVERED AND RELEASE**

20 6.1 This Consent Judgment is a full, final and binding resolution between CEH on
21 behalf of itself and the public interest and Settling Defendant, and its parents, subsidiaries, “doing
22 business as” and affiliated entities (CB2, Crate & Barrel and The Land of Nod) that are under
23 common ownership, predecessors, successors and assigns, directors, officers, employees, and
24 attorneys (“Defendant Releasees”), and all entities, other than those listed on Exhibit C, to which
25 Settling Defendant distributes or sells Covered Products, including but not limited to distributors,
26 wholesalers, customers, retailers, franchisees, licensors and licensees (“Downstream Defendant
27 Releasees”), of any violation of Proposition 65 based on failure to warn about alleged exposure to

1 Lead contained in Covered Products that were manufactured, distributed, sold or offered for sale
2 by a Settling Defendant prior to the Effective Date.

3 6.2 CEH, for itself releases, waives, and forever discharges any and all claims against
4 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any
5 violation of Proposition 65 that have been or could have been asserted in the public interest
6 regarding the failure to warn about exposure to Lead arising in connection with Covered Products
7 manufactured, distributed, sold or offered for sale by Settling Defendant prior to the Effective
8 Date.

9 6.3 Compliance with the terms of this Consent Judgment by Settling Defendant shall
10 constitute compliance with Proposition 65 by Settling Defendant, Settling Defendant's Defendant
11 Releasees and Settling Defendant's Downstream Defendant Releasees with respect to any alleged
12 failure to warn about Lead in Covered Products manufactured, distributed, sold or offered for sale
13 by Settling Defendant after the Effective Date.

14 **7. EFFECT OF SUBSEQUENT SETTLEMENTS**

15 7.1 The parties contemplate that future Consent Judgments entered with other
16 defendants including farmers, processors and manufacturers may involve a higher Reformulation
17 Level due to an allocation of Lead that is naturally occurring under 27 Cal. Code Regs. § 22501.
18 This higher Reformulation Level may also include additional injunctive requirements that will
19 ensure that the Lead in the Covered Products is not avoidable by good agricultural or good
20 manufacturing practices and that the producer, manufacturer, distributor, or holder of the food is at
21 all times utilizing quality control measures that reduce natural occurring Lead to the lowest level
22 currently feasible, as such term is defined in 27 Cal. Code Regs. § 22501.

23 7.2 Accordingly, if on or before January 1, 2019, the Court enters a Judgment or a
24 Consent Judgment to which the Attorney General or CEH is a party that resolves Proposition 65
25 claims regarding failure to warn about Lead in Covered Products that: (i) sets forth a
26 Reformulation Level containing an allocation of Lead that is naturally occurring under 27 Cal.
27 Code Regs. §22501; or (ii) includes injunctive relief designed to ensure that the Lead in the

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1 Covered Products is not avoidable by good agricultural or good manufacturing practices and that
2 the producer, manufacturer, distributor, or holder of the food is at all times utilizing quality control
3 measures that reduce natural occurring Lead to the “lowest level currently feasible” as such term is
4 defined in 27 Cal. Code Regs. § 22501; or (iii) a combination of both, then Settling Defendant
5 may move the Court to modify the Reformulation Level in this Consent Judgment so that it is
6 consistent with the reformulation requirement of such future Judgment or Consent Judgment.
7 Prior to filing any such Motion the parties shall meet and confer in an attempt to agree on specific
8 language regarding the modification pursuant to this Section. To the extent Settling Defendant is
9 a retailer or otherwise not involved in the farming, manufacture or processing of Covered
10 Products, the modification may require that Settling Defendant only purchase Covered Products
11 from entities that comply with the injunctive requirements of such future Judgment or Consent
12 Judgment. If the parties are unable to agree on specific language Settling Defendant shall inform
13 the Court of both parties’ positions in the papers filed in support of the Motion to Modify this
14 Consent Judgment. If Plaintiff elects to prepare a Motion to Modify this Consent Judgment,
15 Plaintiff shall meet and confer with Settling Defendant prior to filing any such motion. If the
16 parties are unable to agree on specific language Plaintiff shall inform the Court of both parties’
17 positions in the papers filed in support of the Motion to Modify this Consent Judgment.

18 **8. PROVISION OF NOTICE**

19 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
20 notice shall be sent by first class and electronic mail to:

21 Eric S. Somers
22 Lexington Law Group
23 503 Divisadero Street
24 San Francisco, CA 94117
25 esomers@lexlawgroup.com

26 8.2 When Settling Defendant is entitled to receive any notice under this Consent
27 Judgment, the notice shall be sent by first class and electronic mail to the person identified in
28 Exhibit A for Settling Defendant.

8.3 Any Party may modify the person and address to whom the notice is to be sent by

1 sending the other Party notice by first class and electronic mail.

2 **9. COURT APPROVAL**

3 9.1 This Consent Judgment shall become effective on the Effective Date, provided
4 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
5 Settling Defendant shall support entry of the Consent Judgment.

6 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
7 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

8 **10. GOVERNING LAW AND CONSTRUCTION**

9 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
10 California.

11 **11. ATTORNEYS' FEES**

12 11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
13 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs
14 unless the unsuccessful Party has acted with substantial justification. For purposes of this Consent
15 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
16 Discovery Act of 1986, Code of Civil Procedure §§ 2016.010, *et seq.*

17 11.2 Notwithstanding Section 11.1, a Party who prevails in a contested enforcement
18 action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of
19 Civil Procedure §1021.5 against a Party that acted with substantial justification. The Party
20 seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and this
21 provision shall not be construed as altering any procedural or substantive requirements for
22 obtaining such an award.

23 11.3 Nothing in this Section 11 shall preclude a party from seeking an award of
24 sanctions pursuant to law.

25 **12. ENTIRE AGREEMENT**

26 12.1 This Consent Judgment contains the sole and entire agreement and understanding
27 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,

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1 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
2 and therein. There are no warranties, representations, or other agreements between the Parties
3 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
4 other than those specifically referred to in this Consent Judgment have been made by any Party
5 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
6 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
7 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
8 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
9 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
10 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
11 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
12 whether or not similar, nor shall such waiver constitute a continuing waiver.

13 **13. RETENTION OF JURISDICTION**

14 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
15 Consent Judgment.

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

17 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
18 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
19 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

21 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
22 against an entity that is not a Settling Defendant on terms that are different than those contained in
23 this Consent Judgment.

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1 **16. EXECUTION IN COUNTERPARTS**

2 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
3 means of facsimile or portable document format (pdf), which taken together shall be deemed to
4 constitute one document.

5
6 **IT IS SO ORDERED, ADJUDGED,
7 AND DECREED**

8 Dated: _____
9
10 Judge of the Superior Court of the State of California

11 **IT IS SO STIPULATED:**

<p>12 Dated: <u>June 12</u>, 2015</p>	<p>13 CENTER FOR ENVIRONMENTAL HEALTH</p> <p>14 </p> <p>15 _____</p> <p>16</p> <p>17 </p> <p>18 Printed Name</p> <p>19</p> <p>20 </p> <p>21 Title</p> <p>22</p>
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Dated: <u>June 23, 2015</u>	EUROMARKET DESIGNS, INC. <u><i>Victoria L. Donati</i></u> <u>Victoria L. Donati</u> Printed Name <u>General Counsel and Secretary</u> Title
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EXHIBIT A
Settling Defendant

Settling Defendant: Euromarket Designs, Inc.

1. Covered Product(s) To Be Withdrawn From Market (“Noticed Covered Products”):

The Ginger People Organic Crystallized Ginger Jar: SKU No. 7-34027-91010-2,
Crate & Barrel SKU No. 185-558

2. Defendant’s Settlement Payment and Allocation:

Total Settlement Payment	\$ 20,000
Civil Penalty OEHHA Portion	\$ 1,950
Civil Penalty CEH Portion	\$ 650
Payment in Lieu of Civil Penalty	\$ 3,900
Attorneys’ Fees and Costs	\$ 13,500

3. Person(s) to Receive Notices Pursuant to Section 8:

Judith Praitis
Sidley Austin LLP
555 West Fifth Street
Los Angeles, CA 90013
(213) 896-6637
jpraitis@sidley.com

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EXHIBIT B

Product and Supplier Information

For each Covered Product sold by your company in the two years prior to the Effective Date, please provide the following information and documents:

1. Covered Product name.
2. Covered Product Description.
3. SKU or UPC number.
4. Name, address, contact person, phone, e-mail and web site of the company from which each Covered Product was purchased.
5. Name, address, contact person, phone, e-mail and web site of importer or distributor.
6. Name, address, contact person, phone, e-mail and web site of product manufacturer.
7. Name, address, contact person, phone, e-mail and web site of any other know entity in the upstream chain of distribution.
8. Date and number of units ordered for each order of a Covered Product purchased from the date two years prior to the Effective Date to the Effective Date. Please attach copies of each Purchase Order or other documentation from each sale.
9. Units of each Covered Product sold from the date two years prior to the Effective Date to the Effective Date.
10. Indicate if any Proposition 65 warnings were provided with each of the Covered Products and if so, provide a copy of such warning.
11. Identify the country of origin of each Covered Product.
12. Identify and attach any test results in your possession for any of the Covered Products.

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EXHIBIT C
**(LIST OF ENTITIES NOT SUBJECT
TO DOWNSTREAM DEFENDANT RELEASE)**

List of non-settling defendants that have received
60-Day Notices re lead in Covered Products from CEH

- ACH Food Companies, Inc.
- Amazon.com, Inc.
- American Roland Food Corporation
- Blue Marble Brands, LLC
- B&V Enterprises, Inc.
- Buderim Ginger Limited
- Cost Plus, Inc.
- Dakota Brothers, Inc.
- Draeger's Super Markets
- Frieda's, Inc.
- Frontier Distribution LLC
- Frontier Natural Products Co-op
- Foodnet Supermarkets, Inc.
- Garden Grove Superstore Inc.
- Goldstar Supermarket
- Hosoda Bros. Inc.
- Island Pacific Supermarkets, Inc.
- Kam Lee Yuen Trading Co., Inc.
- Longchamp Corporation dba Lion Supermarket
- Marra Bros. Dist., Inc.
- Mrs. Gooch's Natural Food Markets, Inc.
- Reed's, Inc.
- Safeway, Inc.

- 1 San Pablo Supermarket, Inc.
- 2 Save Mart Supermarkets
- 3 Shun Fat Supermarket, Inc.
- 4 Sunflower Farmers Markets, LLC
- 5 Tawa Supermarket, Inc.
- 6 Torn & Glasser, Inc.
- 7 Trader Joe's Company
- 8 Unbeatable Sale.com Inc.
- 9 United Natural Foods, Inc.
- 10 United Natural Trading, LLC
- 11 Wal-Mart Stores, Inc.
- 12 Walmart.com USA LLC
- 13 Whole Foods Market California, Inc.
- 14 Y-Opco, LLC

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