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13 CENTER FOR ENVIRONMENTAL HEALTH

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

16 CENTER FOR ENVIRONMENTAL
17 HEALTH,

18 Plaintiff,

19 v.

20 COMPAÑÍA CERVECERA DE PUERTO
21 RICO, INC., *et al.*,

22 Defendants.

Case No. RG 14-730384

**[PROPOSED] CONSENT
JUDGMENT AS TO DEFENDANTS
BAVARIA S.A., LOGISTIC
ALLIANCE, INC., LOGISTIC
ALLIANCE SERVICES LLC**

1 **1. INTRODUCTION**

2 1.1 This Consent Judgment is entered into by the Center For Environmental Health
3 (“CEH”), a California non-profit corporation, and Bavaria S.A., Logistic Alliance, Inc. and Logistic
4 Alliance Services LLC (collectively, “Defendants”) to settle certain claims asserted by CEH against
5 Defendants as set forth in the operative complaint in the matter entitled *Center for Environmental*
6 *Health v. Compañía Cervecería de Puerto Rico, Inc., et al.*, Alameda County Superior Court Case
7 No. RG 14-730384 (the “Action”). CEH and Defendants are referred to collectively as the
8 “Parties.”

9 1.2. On October 31, 2014, CEH served a 60-Day Notice of Violation (the “Notice”) relating to the California Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition
10 65”) on Defendants, the California Attorney General, the District Attorneys of every County in the
11 State of California, and the City Attorneys for every City in the State of California with a
12 population greater than 750,000. The Notice alleges violations of Proposition 65 with respect to the
13 presence of 4-methylimidazole (“4-MEI”) in carbonated soft drinks containing caramel coloring
14 manufactured, distributed, and/or sold by Defendants (hereinafter, “Covered Products”).
15

16 1.3. Defendants are corporations that employ ten (10) or more persons, and that
17 manufacture, distribute, and/or sell Covered Products in the State of California.

18 1.4. For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over the allegations of violations contained in CEH’s Complaint and personal
20 jurisdiction over Defendants as to the acts alleged in CEH’s Complaint, that venue is proper in the
21 County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a full and
22 final resolution of all claims which were or could have been raised in the Complaint based on the
23 facts alleged therein.

24 1.5. CEH and Defendants enter into this Consent Judgment as a full and final settlement
25 of all claims that were raised in the Complaint, or that could have been raised in the Complaint,
26 arising out of the facts or conduct alleged therein. By execution of this Consent Judgment and
27 agreeing to comply with its terms, the Parties do not admit any facts or conclusions of law
28 including, but not limited to, any facts or conclusions of law suggesting or demonstrating any

1 violations of Proposition 65 or any other statutory, common law, or equitable requirements.
2 Nothing in this Consent Judgment is or shall be construed as an admission by the Parties of any fact,
3 conclusion of law, issue of law, or violation of law, nor shall compliance with the Consent
4 Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law,
5 issue of law, or violation of law. Defendants deny the material factual and legal allegations in
6 CEH’s Complaint and expressly deny any wrong doing whatsoever. Nothing in this Consent
7 Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may
8 have in this or any other pending or future legal proceedings, except that through this settlement,
9 Defendants waive any express or implied claims for indemnification or contribution—or any other
10 claims seeking full or partial recovery of the amounts each agrees to pay to settle the instant
11 action—that they may have against each other. This Consent Judgment is the product of
12 negotiation and compromise and is accepted by the Parties solely for purposes of settling,
13 compromising, and resolving issues disputed in this action.

14 1.6 **No Admissions.** By executing this Consent Judgment and agreeing to provide the
15 relief and remedies specified herein, Settling Defendant does not admit (a) that it has violated, or
16 threatened to violate Proposition 65, Business & Professions Code sections 17200 et seq., Business
17 & Professions Code sections 17500 et seq., the California Consumers Legal Remedies Act, or any
18 other law or legal duty; or (b) that the chemical 4-MEI in the Covered Products or in other foods or
19 beverages poses any risk to human health or requires any disclosure or warning to consumers.

20 1.7 The Parties recognize that:

21 (a) 4-MEI is formed as a byproduct when certain foods, beverages, and
22 ingredients, such as the caramel color used as an ingredient in the carbonated soft drink products at
23 issue in this case, are heated or otherwise processed; and

24 (b) Levels of 4-MEI formation are due to a wide variety of factors in the raw
25 material and may vary significantly from batch to batch.

26 1.8 Settling Defendant further notes that:

27 (a) The U.S. Food & Drug Administration’s current position on 4-MEI is as
28 follows: “Based on the available information, FDA has no reason to believe that there is any

1 immediate or short-term danger presented by 4-MEI at the levels expected in food from the use of
2 caramel coloring.”; and

3 (b) The European Food Safety Authority (EFSA) has concluded that it has no
4 concerns about Europeans being exposed to 4-MEI from the use of caramel coloring in food.

5 **2. INJUNCTIVE RELIEF**

6 2.1 Defendants shall comply with the following requirements to eliminate exposures to
7 4-MEI arising from the consumption of the Covered Products, except that Defendants Logistic
8 Alliance, Inc. and Logistic Alliance Services LLC, and not Bavaria S.A., shall assume sole
9 obligation to ensure compliance with provisions 2.1.2 through 2.1.4 for any Covered Products
10 distributed by them.

11 2.1.1. **Reformulation of Covered Products.** As of the date of entry of this
12 Consent Judgment (the “Effective Date”), Defendants shall not manufacture, distribute, sell, or offer
13 for sale in California any Covered Product manufactured on or later than the Effective Date unless
14 such Covered Product contains no more than 81 parts per billion (“ppb”) 4-MEI.

15 2.1.2. **Interim Compliance.** Any Covered Product that is manufactured before the
16 Effective Date and distributed, sold, or offered for sale by Defendants in California after the
17 Effective Date shall be accompanied by a Clear and Reasonable Warning on each retail unit that
18 complies with Section 2.1.4.

19 2.1.3. **Warnings for Products in the Stream of Commerce.** In an effort to ensure
20 that consumers receive clear and reasonable warnings in compliance with Proposition 65 for
21 Covered Products that have not been reformulated pursuant to Section 2.1.1 or labeled in
22 accordance with Section 2.1.2, within thirty (30) days following the Effective Date, Defendants
23 shall provide warning materials by certified mail to each of their California retailers or distributors
24 to whom Defendants reasonably believes they sold Covered Products that contained or may have
25 contained 4-MEI. Such warning materials shall include a reasonably sufficient number of stickers
26 in order to permit the retailer or distributor to place a warning sticker on each retail unit of Covered
27 Product such customer has purchased from Defendants. The stickers shall contain the warning
28 language set forth in Section 2.1.4. The warning materials shall also include a letter of instruction

1 for the placement of the stickers on Covered Products, and a Notice and Acknowledgment postcard.

2 2.1.4. **Proposition 65 Warnings.** A Clear and Reasonable Warning under this
3 Consent Judgment shall state:

4 WARNING: This product contains 4-methylimidazole (“4-MEI”), a chemical known
5 to the State of California to cause cancer.

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

15 **3. PENALTIES AND PAYMENT**

16 3.1 Within ten (10) days following the Effective Date, Defendants shall pay the total
17 sum of \$49,500 as a settlement payment, which shall be allocated and delivered as set forth on
18 Exhibit A and below. The payments set forth herein are not joint and several among Defendants.
19 Rather, such payments shall be borne by each Defendant only as set forth on Exhibit A. The
20 payments from each Defendant required under Sections 3.1.1-3.1.3 shall be made in four (4)
21 separate checks, all of which shall be delivered to Mark Todzo at Lexington Law Group at the
22 address set forth in Section 7.

23 3.1.1. A civil penalty pursuant to Cal. Health & Safety Code § 25249.7(b), such
24 money to be apportioned by CEH in accordance with Cal. Health & Safety Code § 25249.12. The
25 payments required under this Section 3.1.1 and Exhibit A shall be made payable to the Center for
26 Environmental Health.

27 3.1.2. A payment in lieu of civil penalty pursuant to Cal. Health & Safety Code §
28 25249.7(b) and 11 C.C.R. § 3202(b). CEH will use such funds to continue its work of educating

1 and protecting the public from exposures to toxic chemicals. CEH may also use a portion of such
2 funds to monitor compliance with this Consent Judgment and to purchase and test Defendants'
3 products to confirm compliance. In addition, as part of its Community Environmental Action and
4 Justice Fund, CEH will use four percent (4%) of such funds to award grants to grassroots
5 environmental justice groups working to educate and protect the public from exposures to toxic
6 chemicals. The method of selection of such groups can be found at the CEH website at
7 www.ceh.org/justicefund. The payments required under this Section 3.1.2 and Exhibit A shall be
8 made payable to the Center for Environmental Health.

9 3.1.3. A reimbursement of CEH's reasonable attorneys' fees and costs. The
10 payments required under this Section 3.1.3 and Exhibit A shall be made payable to Lexington Law
11 Group and the Center for Environmental Health.

12 **4. ENFORCEMENT OF CONSENT JUDGMENT**

13 4.1. CEH may, by motion or application for an order to show cause before the Superior
14 Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment.
15 Prior to bringing any motion or application to enforce the requirements of Section 2 above, CEH
16 shall provide Defendants with a Notice of Violation and a copy of any test results which
17 purportedly support CEH's Notice of Violation. The Parties shall then meet and confer regarding
18 the basis for CEH's anticipated motion or application in an attempt to resolve it informally,
19 including providing Defendants with a reasonable opportunity of at least thirty (30) days to cure any
20 alleged violation. Should such attempts at informal resolution fail, CEH may file an enforcement
21 motion or application. The prevailing party on any motion to enforce this Consent Judgment shall
22 be entitled to its reasonable attorney's fees and costs incurred as a result of such motion or
23 application. This Consent Judgment may only be enforced by the Parties.

24 **5. MODIFICATION OF CONSENT JUDGMENT**

25 5.1. This Consent Judgment may only be modified by written agreement of CEH and
26 Defendants, or upon motion of CEH or Defendants as provided by law.

1 **6. CLAIMS COVERED AND RELEASE**

2 6.1. This Consent Judgment is a full, final, and binding resolution between CEH acting in
3 the public interest and Defendants and Defendants’ parents, officers, directors, shareholders,
4 divisions, subdivisions, subsidiaries, including Bavaria S.A.’s sister subsidiary SABMiller Latin
5 America Inc., and their respective successors and assigns (“Defendant Releasees”), and all entities
6 to whom they directly or indirectly distribute or sell or have distributed or sold Covered Products,
7 including but not limited to distributors, wholesalers, customers, retailers, and their affiliates and
8 subsidiaries, franchisees, cooperative members, licensors, and licensees (“Downstream Defendant
9 Releasees”), of all claims that were or could have been alleged in the Complaint in this Action
10 arising from any violation of Proposition 65 that have been or could have been asserted in the public
11 interest against Defendants, Defendant Releasees, and Downstream Defendant Releasees regarding
12 the failure to warn about exposure to 4-MEI in the Covered Products manufactured, distributed, or
13 sold by Defendants prior to the Effective Date.

14 6.2. CEH, for itself releases, waives, and forever discharges any and all claims alleged in
15 the Complaint against Defendants, Defendant Releasees, and Downstream Defendant Releasees
16 arising from any violation of Proposition 65 that have been or could have been asserted regarding
17 the failure to warn about exposure to 4-MEI in connection with Covered Products manufactured,
18 distributed, or sold by Defendants prior to the Effective Date.

19 6.3. Compliance with the terms of this Consent Judgment by Defendants, Defendant
20 Releasees, and Downstream Defendant Releasees shall constitute compliance with Proposition 65
21 by Defendants, Defendant Releasees, and Downstream Defendant Releasees with respect to any
22 alleged failure to warn about 4-MEI in Covered Products manufactured, distributed, or sold by
23 Defendants after the Effective Date.

24 **7. PROVISION OF NOTICE**

25 7.1. When any Party is entitled to receive any notice under this Consent Judgment, the
26 notice shall be sent by first class and electronic mail as follows:

27 7.1.1. **Notices to Defendant Bavaria S.A.** The person for Defendant Bavaria S.A.
28 to receive notices pursuant to this Consent Judgment shall be:

1 Colin Schreck
2 Shook, Hardy & Bacon LLP
3 One Montgomery Tower
4 120 Kearny Street, Suite 2700
5 San Francisco, CA 94104
6 cschreck@shb.com

7 **7.1.2. Notices to Defendants Logistic Alliance, Inc. and Logistic Alliance**
8 **Services LLC.** The person for Defendants Logistic Alliance, Inc. and Logistic Alliance
9 Services LLC to receive notices pursuant to this Consent Judgment shall be:

10 Barbara R. Adams
11 Adams Nye Becht LLP
12 222 Kearny St., 7th Floor
13 San Francisco, CA 94108
14 badams@adamsnye.com

15 **7.1.3. Notices to Plaintiff.** The person for CEH to receive notices pursuant to this
16 Consent Judgment shall be:

17 Mark Todzo
18 Lexington Law Group
19 503 Divisadero Street
20 San Francisco, CA 94117
21 mtodzo@lexlawgroup.com

22 **7.2.** Any Party may modify the person and address to whom the notice is to be sent by
23 sending the other Parties notice by both first class and electronic mail.

24 **8. COURT APPROVAL**

25 **8.1.** This Consent Judgment shall become effective on the Effective Date, provided
26 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
27 Defendants shall support approval of such Motion.

28 **8.2.** If this Consent Judgment is not entered by the Court, it shall be of no force or effect
and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

9. GOVERNING LAW AND CONSTRUCTION

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

1 **10. ENTIRE AGREEMENT**

2 10.1. This Consent Judgment contains the sole and entire agreement and understanding of
3 CEH and Defendants with respect to the entire subject matter hereof, and any and all prior
4 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
5 merged herein.

6 10.2. There are no warranties, representations, or other agreements between CEH and
7 Defendants except as expressly set forth herein. No representations, oral or otherwise, express or
8 implied, other than those specifically referred to in this Consent Judgment have been made by any
9 Party hereto.

10 10.3. No other agreements not specifically contained or referenced herein, oral or
11 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
12 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
13 any of the Parties hereto only to the extent that they are expressly incorporated herein.

14 10.4. No supplementation, modification, waiver, or termination of this Consent Judgment
15 shall be binding unless executed in writing by the Party to be bound thereby.

16 10.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or
17 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such
18 waiver constitute a continuing waiver.

19 **11. RETENTION OF JURISDICTION**

20 11.1. This Court shall retain jurisdiction of this matter to implement or modify the Consent
21 Judgment.

22 **12. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

23 12.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized
24 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute
25 the Consent Judgment on behalf of the Party represented and to legally bind that Party.

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

27 13.1. Nothing in this Consent Judgment shall preclude CEH from resolving any claim
28 against another entity on terms that are different from those contained in this Consent Judgment.

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14. EXECUTION IN COUNTERPARTS

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

IT IS SO STIPULATED:

Dated: 17 JUNE, 2016 **CENTER FOR ENVIRONMENTAL HEALTH**



Signature


Printed Name


Title

Dated: _____, 2016 **BAVARIA S.A.**

Signature

Printed Name

Title

1 **14. EXECUTION IN COUNTERPARTS**

2 14.1. The stipulations to this Consent Judgment may be executed in counterparts and by
3 means of facsimile, which taken together shall be deemed to constitute one document.
4

5 **IT IS SO STIPULATED:**

6
7
8 Dated: _____, 2016 **CENTER FOR ENVIRONMENTAL HEALTH**

9
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11 _____
Signature

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13 _____
Printed Name

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15 _____
Title

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18 Dated: June 10th, 2016

BAVARIA S.A.

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20 _____
Signature

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FERNANDO JARAMILLO GIRALDO

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LEGAL REPRESENTATIVE

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Dated: June 22, 2016

LOGISTIC ALLIANCE, INC.

[Handwritten Signature]

Signature

Francisco Borras

Printed Name

President

Title

Dated: June 22, 2016

LOGISTIC ALLIANCE SERVICES LLC

[Handwritten Signature]

Signature

Francisco Borras

Printed Name

President

Title

**IT IS SO ORDERED, ADJUDGED,
AND DECREED:**

Dated: _____, 2016

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

EXHIBIT A

Settlement Payments from Defendants

Defendant: Bavaria S.A.

Defendant Bavaria S.A.'s Settlement Payment and Allocations:

Total Settlement Payment:	\$30,000
Civil Penalty:	\$ 3,060
Payment in Lieu of Civil Penalty:	\$ 4,590
Attorneys' Fees and Costs to LLG:	\$19,500
Attorneys' Fees and Costs to CEH:	\$ 2,850

Defendants: Logistic Alliance, Inc. and Logistic Alliance Services LLC

Defendants Logistic Alliance, Inc. and Logistic Alliance Services LLC's Settlement Payment and Allocations:

Total Settlement Payment:	\$19,500
Civil Penalty:	\$ 1,989
Payment in Lieu of Civil Penalty:	\$ 2,984
Attorneys' Fees and Costs to LLG:	\$12,674
Attorneys' Fees and Costs to CEH:	\$ 1,853