

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

CENTER FOR ENVIRONMENTAL HEALTH,)	Case No. RG-13-693015
)	
Plaintiff,)	[PROPOSED] CONSENT JUDGMENT
)	AS TO THE RAYMOND HADLEY
v.)	CORP.
)	
GENERAL MILLS, 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 the company identified on Exhibit A (collectively, the “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 baking mix products that contain molasses, ginger, or both molasses and ginger (“Covered Products”) sold by Settling Defendant that have been or will be sold or offered for sale to California consumers.

1.2 Beginning on March 1, 2013, CEH served multiple 60-day Notices of Violation under Proposition 65, alleging that Settling Defendant violated Proposition 65 by exposing

1 persons to lead and lead compounds (“Lead”) contained in Covered Products without first
2 providing a clear and reasonable Proposition 65 warning.

3 1.3 Settling Defendant is a corporation or other business entity that manufactures,
4 distributes, sells or offers for sale Covered Products that are sold or offered for sale or has done so
5 in the past.

6 1.4 On May 1, 2013, CEH filed the Complaint in the above-captioned matter. The
7 original complaint has since been amended to add additional parties as named defendants.

8 1.5 For purposes of this Consent Judgment only, CEH and Settling Defendant (the
9 “Parties”) stipulate that this Court has jurisdiction over the allegations of violations contained in
10 the Complaint and personal jurisdiction over Settling Defendant as to the acts alleged in the
11 Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to
12 enter this Consent Judgment as a full and final resolution of all claims which were or could have
13 been raised in the Complaint based on the facts alleged therein with respect to Covered Products
14 manufactured, distributed, offered for sale or sold by Settling Defendant.

15 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the
16 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with
17 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
18 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
19 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
20 other pending or future legal proceedings. This Consent Judgment is the product of negotiation
21 and compromise and is accepted by the Parties solely for purposes of settling, compromising, and
22 resolving issues disputed in this Action.

23 **2. INJUNCTIVE RELIEF**

24 2.1 **Specification Compliance Date.** To the extent it has not already done so, no more
25 than thirty (30) days after the date of entry of this Consent Judgment, any Settling Defendant that
26 purchases any Covered Products from a third party that is not under common ownership (a
27 “Covered Product Supplier”) shall provide the Reformulation Level set forth in Section 2.2 to each

28

1 Covered Product Supplier and shall instruct each such Covered Product Supplier to provide it with
2 Covered Products that comply with the Reformulation Level set forth in Section 2.2. If in the
3 future Settling Defendant purchases Covered Products from a Covered Product Supplier that it has
4 not previously provided with instructions regarding the Reformulation Level set forth in Section
5 2.2, Settling Defendant shall provide the Reformulation Level set forth in Section 2.2 to such
6 Covered Product Supplier prior to placing an initial order for Covered Products and instruct the
7 Covered Product Supplier to provide it with Covered Products that comply with the Reformulation
8 Level set forth in Section 2.2. Settling Defendant shall retain and make available to CEH upon
9 reasonable written request records of communications sent to and received from Covered Product
10 Suppliers that are related to the requirement of this Section 2.1 for a period of five (5) years from
11 the date of entry of this Consent Judgment (the “Effective Date”).

12 2.2 **Reformulation of Covered Products.** Settling Defendant shall not purchase,
13 manufacture, have manufactured, ship, sell or offer for sale Covered Products that will be sold or
14 offered for sale to California consumers after the Effective Date (the “Reformulation Deadline”)
15 that contain a concentration of more than thirty (30) parts per billion (“ppb”) Lead by weight (the
16 “Reformulation Level”), such concentration to be determined by use of a test performed by an
17 accredited laboratory using inductively coupled plasma mass spectrometry (ICP-MS) equipment
18 with a level of detection of at least ten (10) ppb.

19 2.3 **Testing.** Except as provided in Section 2.5, to ensure compliance with Section 2.2,
20 Settling Defendant shall conduct random testing of Covered Products and take the follow-up
21 actions described in this section (“Validation Testing”), provided however, that if Settling
22 Defendant purchases Covered Products from another Settling Defendant, only the Settling
23 Defendant that sold the Covered Products to the other Settling Defendant need perform Validation
24 Testing on those Covered Products.

25 2.3.1 Covered Products To Be Tested. The Covered Products to
26 be tested shall be for each type of Covered Product a Settling Defendant manufactures or arranges
27 to be manufactured. Such Validation Testing shall be performed on samples drawn randomly
28

1 from each production lot of each type of Covered Product. For purposes of this Consent Judgment
2 a “type” of a Covered Product is either an individual Covered Product as identified by SKU or
3 other product identifier or one which CEH and Settling Defendant have agreed has materially the
4 same characteristics based on the type, supplier and amount of ginger and/or molasses used in its
5 recipe or formula.

6 2.3.2 Methods of Testing. Prior to Settling Defendant’s first sale
7 or distribution of a Covered Product that will be sold or offered for sale to California consumers
8 after the Effective Date, Settling Defendant shall conduct Validation Testing pursuant to one of
9 the following methods: (1) the FDA sample preparation protocol discussed in the method entitled
10 “Elemental Analysis Manual: Section 4.4 Inductively Coupled Plasma-Atomic Emission
11 Spectrometric Determination of Elements in Food Using Microwave Assisted Digestion”¹ or (2) a
12 microwave- or heat-assisted acid digestion method employing high-purity reagents, provided that
13 the laboratory digests at least 0.5 grams of each sample taken from a properly homogenized
14 complete package of Covered Product, analyzes each sample undiluted by ICP-MS, and uses an
15 instrument quantitation limit corresponding to less than three (3) micrograms of Lead in the
16 finished product.

17 2.3.3 Laboratories Conducting Validation Testing. Any
18 Validation Testing shall be performed by a laboratory meeting at least one of the following
19 standards: Environmental Laboratory Certification from the State of California, Department of
20 Health Services, Environmental Laboratory Accreditation Program; NSF International; American
21 Association for Laboratory Accreditation for Chemical Testing; International Standards
22 Organization/IEC via ANSI-ASQ; or an in-house laboratory or other facility experienced in testing
23 for lead levels in foods that complies with the Production and Process Control System;
24 Requirements for Laboratory Operations set forth in 21 C.F.R. Part 111, Subpart J, including but
25 not limited to the requirements for written procedures, requirements for laboratory control

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

1 processes, requirements for laboratory methods and examination, record retention policies, and
2 other laboratory requirements. Laboratories deemed to meet these requirements are listed on
3 Exhibit B.

4 2.3.4 Duration of Testing. In the event that the Validation Testing
5 demonstrates two (2) years of continuous compliance with the Reformulation Level by a Settling
6 Defendant for a Covered Product, Settling Defendant may send written notice to CEH and
7 thereafter may cease Validation Testing for that type of Covered Product; provided however, if
8 there is a material change in the type or level of ginger or molasses used in a Covered Product that
9 is reasonably likely to affect the Lead levels in the product, then Settling Defendant shall arrange
10 for testing for a minimum of two consecutive years after that change.

11 2.3.5 Covered Products That Exceed Reformulation Level. If a
12 Validation Testing result indicates that a type of a Covered Product exceeds the Reformulation
13 Level, Settling Defendant shall ensure that all Covered Products from the same production lot as
14 those from which the sample of the Covered Product(s) that exceeded the Reformulation Level
15 were drawn as well as other lots of the same type of Covered Product produced in the same
16 calendar quarter that were not individually subject to Validation Testing (the “Non-Compliant
17 Products”) will not be sold or offered for sale to California consumers. Notwithstanding the
18 foregoing, if the results of Validation Testing of a sample of a type of Covered Product exceeds
19 the Reformulation Level, Settling Defendant may collect up to three (3) more samples of the
20 Covered Product from the same production lot and have those samples tested in accordance with
21 Section 2.3. If the results of Validation Testing of all of the samples of a type of Covered Product
22 collectively yield an arithmetic mean of no more than thirty (30) ppb Lead by weight, Settling
23 Defendant may treat that type of Covered Product as meeting the Reformulation Level for that
24 Validation Testing cycle as long as no result for a sample exceeds fifty (50) ppb Lead, subject to
25 the following confirmatory process. If a sample exceeds fifty (50) ppb Lead, Settling Defendant
26 may collect three (3) more samples of the Covered Product from the same production lot and have
27 those samples tested in accordance with Section 2.3. Provided that none of those additional test
28

1 results exceed forty (40) ppb, those additional test results shall then be used in place of the sample
2 that exceeded fifty (50) ppb in determining whether the arithmetic mean of Validation Test results
3 for the Covered Product exceeded the Reformulation Level.

4 2.3.6 Records. The testing reports and results of the Validation
5 Testing performed pursuant to this Consent Judgment shall be retained by Settling Defendant for
6 four (4) years and made available to CEH upon reasonable request.

7 2.4 **Good Faith Commitment to Pursue Further Lead Reduction.** In an effort to
8 ensure that Covered Products contain naturally occurring Lead at the lowest level currently
9 feasible, as required by California Code of Regulations, Title 27, § 25001(a)(4), Settling
10 Defendant shall continue to take, or cause to be taken, good faith and commercially reasonable
11 efforts to further reduce the Lead content of its Covered Products with a goal of Covered Products
12 having a consistent Lead content of seventeen (17) ppb or less, except as provided in Section 2.5.
13 These efforts shall include, at a minimum, efforts to further adjust recipes and formulas that will
14 reduce Lead content in Covered Products and attempts to secure Covered Product ingredients such
15 as molasses and ginger with lower Lead content. Within fifteen (15) days of the Reformulation
16 Deadline, and annually thereafter for two more years, Settling Defendant shall submit to CEH a
17 written report of the activities it has undertaken to effectuate its good faith commitment under this
18 paragraph. If Settling Defendant has test results demonstrating that all of its Covered Products
19 have a consistent Lead content of seventeen (17) ppb or less and it provides such documentation to
20 CEH, or if CEH and Settling Defendant otherwise agree in writing, then Settling Defendant need
21 not submit any subsequent annual report to CEH pursuant to this paragraph.

22 2.5 **Products Not Subject to Testing.** The requirements of Section 2.3 shall not apply
23 to any Covered Product for which CEH and Settling Defendant agree in writing that such sections
24 shall not apply to a particular Covered Product provided that the Settling Defendant has no test
25 results demonstrating lead levels above thirty (30) ppb on such Covered Product in its possession.
26
27
28

1 **3. ENFORCEMENT**

2 3.1 **General Enforcement Provisions.** CEH may, by motion or application for an
3 order to show cause before this Court, enforce the terms and conditions contained in this Consent
4 Judgment. Any action to enforce alleged violations of Section 2.2 by a Settling Defendant shall be
5 brought exclusively pursuant to this Section 3, and as applicable be subject to the meet and confer
6 requirement of Section 3.2.4.

7 3.2 **Enforcement of Reformulation Commitment.**

8 3.2.1 Notice of Violation. In the event that CEH identifies a
9 Covered Product that was sold or offered for sale to California consumers at any time following
10 the Reformulation Deadline for which CEH has laboratory test results showing that the Covered
11 Product has a Lead level exceeding the Reformulation Level, CEH may issue a Notice of
12 Violation pursuant to this Section. Such Notice of Violation shall be based upon a test result
13 sufficient to establish an exceedance of the Reformulation Level as it is to be evaluated under
14 Section 2.3; the results employed shall also meet the sampling, testing, and laboratory criteria
15 specified under Section 2.3.

16
17 3.2.2 Service of Notice of Violation and Supporting
18 Documentation.

19 3.2.2.1 Subject to Section 3.2.1, the Notice of Violation shall
20 be sent to the person(s) identified in Exhibit A to receive notices for the Settling Defendant, and
21 must be served within 45 days of the date the Covered Products at issue were purchased or
22 otherwise acquired by CEH, provided, however, that CEH may have up to an additional 45 days to
23 send the Notice of Violation if, notwithstanding CEH’s good faith efforts, the test data required by
24 Section 3.2.2.2 below cannot be obtained by CEH from its laboratory before expiration of the
25 initial 45 day period.

26 3.2.2.2. The Notice of Violation shall, at a minimum, set
27
28

1 forth: (a) the date the alleged violation was observed; (b) the location at which the Covered
2 Products were offered for sale; (c) a description of the Covered Products giving rise to the alleged
3 violation, including the name and address of the retail entity from which the sample was obtained
4 and if available information that identifies the product lot, such as the “best by” or “sell by” date;
5 and (d) all test data obtained by CEH regarding the Covered Products and supporting
6 documentation sufficient for validation of the test results, including any laboratory reports, quality
7 assurance reports and quality control reports associated with testing of the Covered Products.

8 3.2.3 Notice of Election of Response. No more than 30 days after
9 effectuation of service of a Notice of Violation, the Settling Defendant shall provide written notice
10 to CEH whether it elects to contest the allegations contained in a Notice of Violation (“Notice of
11 Election”). Failure to provide a Notice of Election within 30 days of effectuation of service of a
12 Notice of Violation shall be deemed an election to contest the Notice of Violation.

13 3.2.3.1 If a Notice of Violation is contested, the Notice of
14 Election shall include all then-available documentary evidence regarding the alleged violation,
15 including all test data, if any. If the Settling Defendant or CEH later acquires additional test or
16 other data regarding the alleged violation, it shall notify the other party and promptly provide all
17 such data or information to the party. Any test data used to contest a Notice of Violation shall
18 meet the criteria of Section 2.3.

19 3.2.4 Meet and Confer. If a Notice of Violation is contested, CEH
20 and the Settling Defendant shall meet and confer to attempt to resolve their dispute. Within 30
21 days of serving a Notice of Election contesting a Notice of Violation, and if no enforcement action
22 or application has been filed by CEH pursuant to Section 3.1, the Settling Defendant may
23 withdraw the original Notice of Election contesting the violation and serve a new Notice of
24 Election conceding the violation, provided, however, that, in this circumstance, the Settling
25 Defendant shall pay \$2,500 in addition to any payment required under this Consent Judgment. At
26 any time, CEH may withdraw a Notice of Violation, in which case for purposes of this Section 3.2
27 the result shall be as if CEH never issued any such Notice of Violation. If no informal resolution
28

1 of a Notice of Violation results within 30 days of a Notice of Election to contest, CEH may file an
2 enforcement motion or application pursuant to Section 3.1. In any such proceeding, CEH may
3 seek whatever fines, costs, penalties, attorneys' fees or other remedies are provided by law for
4 failure to comply with the Consent Judgment.

5 3.2.5 Non-Contested Matters. If the Settling Defendant elects not
6 to contest the allegations in a Notice of Violation, it shall identify on a confidential basis to CEH
7 (by proper name, address of principal place of business and telephone number) the person or entity
8 that sold the Covered Products to the Settling Defendant and the manufacturer and other entities in
9 the upstream chain of distribution of the Covered Product, provided that such information is
10 reasonably available. In addition, the Settling Defendant shall undertake corrective action and
11 make payments, if any, as set forth below.

12 3.2.5.1 If the test data provided by CEH in support of
13 the Notice of Violation reports a Lead content in a Covered Product above the Reformulation
14 Level but less than sixty (60) ppb, then the Settling Defendant shall take the following corrective
15 action and make the following payments, if any:

16 A. The Settling Defendant shall include in its Notice of Election
17 a detailed description with supporting documentation of the corrective action that it has
18 undertaken or proposes to undertake to address the alleged violation. Any such correction shall, at
19 a minimum, provide reasonable assurance that the Settling Defendant has stopped all Covered
20 Products having the same lot number or lot identifier, such as "best by" or "sell by" date, as that of
21 the Covered Products identified in CEH's Notice of Violation from being sold or offered for sale
22 in California. The Settling Defendant shall make available to CEH for inspection and/or copying
23 records and correspondence regarding the corrective action. If there is a dispute over the
24 corrective action, the Settling Defendant and CEH shall meet and confer pursuant to Section 3.2.4
25 before seeking any remedy in court. In no case shall CEH issue more than one NOV per
26 manufacturing lot of a particular Covered Product.

27
28

1 Products for sale to California consumers and to either return all such Noticed Covered Products
2 to the Settling Defendant for destruction, or to directly destroy such Noticed Covered Products.
3 The Settling Defendant shall keep and make available to CEH for inspection and copying records
4 and correspondence regarding the market withdrawal and destruction of the Noticed Covered
5 Products. If there is a dispute over the corrective action, the Settling Defendant and CEH shall
6 meet and confer before seeking any remedy in court. In no case shall CEH issue more than one
7 NOV per manufacturing lot of Covered Product.

8 B. If the Notice of Violation is the first, second, third or fourth
9 Notice of Violation received by a Settling Defendant under Section 3.2.5.2 that was not
10 successfully contested or withdrawn, that Settling Defendant shall pay \$16,000 for each Notice of
11 Violation. If a Settling Defendant has received more than four Notices of Violation under Section
12 3.2.5.2 that were not successfully contested or withdrawn, that Settling Defendant shall pay
13 \$24,000 for each Notice of Violation. If a Settling Defendant produces with its Notice of Election
14 test data on the Covered Product that: (i) was conducted prior to the date CEH purchased the
15 Covered Product that is the subject of the Notice of Violation; (ii) was conducted on the same or
16 same type of Covered Product; and (iii) demonstrates Lead levels below the Reformulation Level
17 as evaluated under Section 2.3.4, then any payment under this Section shall be decreased by fifty
18 percent.

19 3.2.6 Payments. Any payments under Section 3.2 shall be made
20 by check payable to the “Lexington Law Group” and shall be paid within 30 days of service of a
21 Notice of Election triggering a payment and which shall be used as reimbursement for costs for
22 investigating, preparing, sending and prosecuting Notices of Violation, and to reimburse
23 attorneys’ fees and costs incurred in connection with these activities.

24 3.3 **Repeat Violations.** If Settling Defendant has received four or more Notices of
25 Violation that were not successfully contested or withdrawn in any twelve (12) month period then,
26 at CEH’s option, CEH may seek whatever fines, costs, penalties, attorneys’ fees or other remedies
27 that are provided by law for failure to comply with the Consent Judgment. Prior to seeking such
28

1 relief, CEH shall meet and confer with the Settling Defendant for at least 30 days to determine if
2 the Settling Defendant and CEH can agree on measures that the Settling Defendant can undertake
3 to prevent future violations.

4 **4. PAYMENTS**

5 4.1 **Payments by Settling Defendant.** Within five (5) days of the entry of this
6 Consent Judgment, Settling Defendant shall pay amounts specified on Exhibit A for that Settling
7 Defendant.

8 4.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall
9 be paid in four separate checks and delivered as set forth below. Any failure by a Settling
10 Defendant to comply with the payment terms herein shall, at CEH’s discretion, be subject to a
11 stipulated late fee in the amount of \$100 for each day after the delivery date the payment is
12 received. The late fees required under this Section shall be recoverable, together with reasonable
13 attorneys’ fees, in an enforcement proceeding brought pursuant to Section 3 of this Consent
14 Judgment. The funds paid by Settling Defendant shall be allocated as set forth on Exhibit A for
15 Settling Defendant between the following categories and made payable as follows:

16 4.2.1 A civil penalty pursuant to Health & Safety Code §
17 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety
18 Code § 25249.12 (25% to CEH and 75% to the State of California’s Office of Environmental
19 Health Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty
20 payment shall be made payable to OEHHA and associated with taxpayer identification number 68-
21 0284486. This payment shall be delivered as follows:

22 For United States Postal Service Delivery:
23 Attn: Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 P.O. Box 4010, MS #19B
27 Sacramento, CA 95812-4010

1 For Non-United States Postal Service Delivery:
2 Attn: Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 1001 I Street, MS #19B
6 Sacramento, CA 95814

7 The CEH portion of the civil penalty payment shall be made payable to the Center For
8 Environmental Health and associated with taxpayer identification number 94-3251981. This
9 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
10 94117.

11 4.2.2 A payment in lieu of civil penalty to CEH pursuant to Health
12 & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH shall
13 use such funds to continue its work educating and protecting people from exposures to toxic
14 chemicals, including heavy metals. In addition, as part of its Community Environmental Action
15 and Justice Fund, CEH will use four (4) percent of such funds to award grants to grassroots
16 environmental justice groups working to educate and protect people from exposures to toxic
17 chemicals. The method of selection of such groups can be found at the CEH web site at
18 www.ceh.org/justicefund. The payment pursuant to this Section shall be made payable to the
19 Center For Environmental Health and associated with taxpayer identification number 94-3251981.

20 4.2.3 A reimbursement of a portion of CEH's reasonable
21 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
22 payable to the Lexington Law Group and associated with taxpayer identification number 94-
23 3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
24 Francisco, CA 94117.

25 **5. MODIFICATION AND DISPUTE RESOLUTION**

26 5.1 **Modification.** This Consent Judgment may be modified from time to time by
27 express written agreement of the Parties, with the approval of the Court, or by an order of this
28 Court upon motion and in accordance with law.

1 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
2 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
3 modify the Consent Judgment.

4 **6. CLAIMS COVERED AND RELEASE**

5 6.1 This Consent Judgment is a full, final and binding resolution between CEH on
6 behalf of itself and the public interest and Settling Defendant and Settling Defendant’s parents,
7 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
8 agents, shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to
9 which a Settling Defendant directly or indirectly distributes or sells Covered Products, including
10 but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors and
11 licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on
12 failure to warn about alleged exposure to Lead contained in Covered Products that were sold,
13 distributed or offered for sale by a Settling Defendant prior to the Effective Date.

14 6.2 CEH, for itself, its agents, successors and assigns, releases, waives, and forever
15 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream
16 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
17 common law claims that have been or could have been asserted by CEH individually or in the
18 public interest regarding the failure to warn about exposure to Lead arising in connection with
19 Covered Products manufactured, distributed or sold by Settling Defendant prior to the Effective
20 Date.

21 6.3 Compliance with the terms of this Consent Judgment by Settling Defendant shall
22 constitute compliance with Proposition 65 by such Settling Defendant, its Defendant Releasees
23 and its Downstream Defendant Releasees with respect to any alleged failure to warn about Lead in
24 Covered Products manufactured, distributed or sold by such Settling Defendant after the Effective
25 Date.

26
27
28

1 **7. PROVISION OF NOTICE**

2 7.1 When CEH is entitled to receive any notice under this Consent Judgment, the
3 notice shall be sent by first class and electronic mail to:

4 Eric S. Somers
5 Lexington Law Group
6 503 Divisadero Street
7 San Francisco, CA 94117
8 esomers@lexlawgroup.com

9 7.2 When Settling Defendant is entitled to receive any notice under this Consent
10 Judgment, the notice shall be sent by first class and electronic mail to the person(s) identified in
11 Exhibit A for each such Settling Defendant.

12 7.3 Any Party may modify the person and address to whom the notice is to be sent by
13 sending the other Party notice by first class and electronic mail.

14 **8. COURT APPROVAL**

15 8.1 This Consent Judgment shall become effective as a contract upon the date signed
16 by CEH and Settling Defendant, whichever is later, provided however, that CEH shall also prepare
17 and file a Motion for Approval of this Consent Judgment and Settling Defendant shall support
18 approval of such Motion.

19 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
20 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

21 **9. GOVERNING LAW AND CONSTRUCTION**

22 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
23 California.

24 **10. ATTORNEYS' FEES**

25 10.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
26 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs
27 unless the unsuccessful Party has acted with substantial justification. For purposes of this Consent
28 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
Discovery Act of 1986, Code of Civil Procedure §§2016.010, et seq.

1 10.2 Notwithstanding Section 10.1, a Party who prevails in a contested enforcement
2 action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of
3 Civil Procedure §1021.5 against a Party that acted with substantial justification. The Party
4 seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and this
5 provision shall not be construed as altering any procedural or substantive requirements for
6 obtaining such an award.

7 10.3 Nothing in this Section 10 shall preclude a party from seeking an award of
8 sanctions pursuant to law.

9 **11. ENTIRE AGREEMENT**

10 11.1 This Consent Judgment contains the sole and entire agreement and understanding
11 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
12 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
13 and therein. There are no warranties, representations, or other agreements between the Parties
14 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
15 other than those specifically referred to in this Consent Judgment have been made by any Party
16 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
17 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
18 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
19 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
20 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
21 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
22 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
23 whether or not similar, nor shall such waiver constitute a continuing waiver.

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

25 12.1 For any report or information that a Settling Defendant submits to CEH pursuant to
26 this Consent Judgment, Settling Defendant may make such a submission subject to the terms of
27
28

1 the protective order previously entered in this action and the protective order's terms shall apply to
2 the report or information as if it were still in effect.

3 **13. RETENTION OF JURISDICTION**

4 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
5 Consent Judgment.

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

7 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
8 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
9 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

11 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
12 against an entity that is not a Settling Defendant on terms that are different than those contained in
13 this Consent Judgment.

14 **16. EXECUTION IN COUNTERPARTS**

15 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
16 means of facsimile or portable document format (pdf), which taken together shall be deemed to
17 constitute one document.

18

19

20

21

22

23

24

25

26

27

28


1 **IT IS SO ORDERED:**

2
3 Dated: _____, 2015

Judge of the Superior Court

4
5
6 **IT IS SO STIPULATED:**

7

8 Dated: <u>May 21</u> , 2015	9 CENTER FOR ENVIRONMENTAL HEALTH 10  11 _____ Signature 12 <u>CHARLIE PIZANO</u> 13 _____ Printed Name 14 <u>Associate Director</u> 15 _____ Title 16
-------------------------------	---

17

18 19 Dated: _____, 2015	20 THE RAYMOND HADLEY CORP. 21 _____ Signature 22 _____ Printed Signatory Name 23 _____ Title 24 25 26 27
-----------------------------	--

1 **IT IS SO ORDERED:**

2
3 Dated: _____, 2015

4 Judge of the Superior Court

5
6 **IT IS SO STIPULATED:**

7
8 Dated: _____, 2015

CENTER FOR ENVIRONMENTAL HEALTH

9
10
11 _____
Signature

12
13 _____
Printed Name

14
15 _____
Title

16
17
18
19 Dated: May 1, 2015

THE RAYMOND HADLEY CORP.

20
21 _____
Signature

22
23 Jacinto S. Maratea
Printed Signatory Name

24
25 _____
Title

26 Chief Executive Officer

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

Settling Defendant

Settling Defendant: The Raymond Hadley Corp.

Settling Defendant's Settlement Payment, Allocation and Payment Dates:

Total Settlement Payment	\$29,000
Total Civil Penalty	\$ 3,800
Payment in Lieu of Civil Penalty	\$ 5,700
Attorneys' Fees and Costs	\$19,500

Payment 1: Within 5 Days of Entry of this Consent Judgment:

Total Settlement Payment 1:	\$14,500
Allocation of Payment 1:	
Civil Penalty OEHHA Portion	\$ 1,425
Civil Penalty CEH Portion	\$ 475
Payment in Lieu of Civil Penalty	\$ 2,850
Attorneys' Fees and Costs	\$ 9,750

Payment 2: Within 30 Days of Entry of this Consent Judgment:

Total Settlement Payment 2:	\$14,500
Allocation of Payment 2:	
Civil Penalty OEHHA Portion	\$ 1,425
Civil Penalty CEH Portion	\$ 475
Payment in Lieu of Civil Penalty	\$ 2,850
Attorneys' Fees and Costs	\$ 9,750

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

Richard C. Lewis
Hinman, Howard & Kattell, LLP
700 Security Mutual Building
80 Exchange St.
P.O. Box 5250
Binghamton, NY 13902-5250
rlewis@hhk.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.