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

CENTER FOR ENVIRONMENTAL HEALTH,	)	Case No. RG 15-765388
	)	
Plaintiff,	)	<b>[PROPOSED] CONSENT JUDGMENT</b>
	)	<b>AS TO HISTON SWEET SPREADS</b>
v.	)	<b>LIMITED</b>
	)	
JAMES KEILLER & SONS LIMITED, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
	)	

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**1. INTRODUCTION**

1.1 The Parties to this Consent Judgment are the Center For Environmental Health (“CEH”), a California non-profit corporation, and Histon Sweet Spreads Limited (“Settling Defendant”). CEH and 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 jam, marmalade, and preservatives containing ginger that are, have been, or will be sold, distributed,

1 or offered for sale by Settling Defendant (“Covered Products”). The date this Consent Judgment  
2 is entered by this Court is referred to herein as the “Effective Date.”

3 1.2 On January 16, 2015, CEH provided a 60-day Notice of Violation under  
4 Proposition 65 to the California Attorney General, the District Attorneys of every county in  
5 California, the City Attorneys of every California city with a population greater than 750,000 and  
6 to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing  
7 persons to lead and lead compounds (“Lead”) contained in Covered Products without first  
8 providing a clear and reasonable Proposition 65 warning.

9 1.3 Settling Defendant is a corporation or other business entity that manufactures,  
10 distributes, sells, or offers for sale Covered Products that are sold in the State of California or has  
11 done so in the past. However, Settling Defendant is a U.K.-based company that manufactures,  
12 distributes, and sells the Covered Products primarily for sale in the U.K. and Europe, and not  
13 directly to California consumers.

14 1.4 On April 7, 2015, CEH filed the Complaint in the above-captioned matter, naming  
15 Settling Defendant as a defendant in the action.

16 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court  
17 has jurisdiction over the allegations of violations contained in the Complaint and personal  
18 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper  
19 in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent  
20 Judgment as a full and final resolution of all claims which were or could have been raised in the  
21 Complaint based on the facts alleged therein with respect to Covered Products manufactured,  
22 distributed, offered for sale, and/or sold by Settling Defendant.

23 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the  
24 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with  
25 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
26 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
27 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any  
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1 other pending or future legal proceedings. This Consent Judgment is the product of negotiation  
2 and compromise and is accepted by the Parties solely for purposes of settling, compromising, and  
3 resolving issues disputed in this Action.

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5 **2. INJUNCTIVE RELIEF**

6 2.1 **Reformulation of Covered Products.** Commencing on December 31, 2016 (the  
7 “Compliance Date”), Settling Defendant shall not purchase, manufacture, ship, sell, or offer for  
8 sale Covered Products that will be sold or offered for sale in California that contain a  
9 concentration of more than forty (40) parts per billion (“ppb”) Lead by weight (the  
10 “Reformulation Level”), such concentration to be determined by use of a test performed by an  
11 accredited laboratory using inductively coupled plasma mass spectrometry (ICP-MS) equipment  
12 with a level of detection of at least ten (10) ppb that meets standard laboratory QA/QC  
13 requirements.

14 2.2 **Alternative Compliance.** As an alternative to meeting the Reformulation Level,  
15 Settling Defendant may sell Covered Products that do not meet the Reformulation Level provided  
16 that such sales made after the Compliance Date are only to entities that have represented to  
17 Settling Defendant that they will not sell or distribute the Covered Products within the State of  
18 California, and further provided that Settling Defendant has provided notice to all entities to  
19 which it sells Covered Products that are reasonably known to sell or distribute the Covered  
20 Products to California consumers that the Covered Products are not labeled for sale in California.  
21 To the extent that Settling Defendant has actual knowledge that an entity is nonetheless selling or  
22 offering for sale Covered Products that do not meet the Reformulation Level to consumers in the  
23 State of California after the Compliance Date, Settling Defendant may not sell Covered Products  
24 that do not meet the Reformulation Level to that entity.

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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 2.1 by Settling Defendant shall be  
5 brought exclusively pursuant to this Section 3, and be subject to the meet and confer requirement  
6 of Section 3.2.4, if applicable.

7             **3.2     Enforcement of Reformulation Commitment.**

8                     **3.2.1     Notice of Violation.** In the event that CEH identifies a Covered Product  
9 that does not comply with Section 2.1 that was sold or offered for sale to California consumers,  
10 and for which CEH has laboratory test results showing that the Covered Product has a Lead level  
11 exceeding the Reformulation Level, CEH may issue a Notice of Violation pursuant to this  
12 Section.

13                             **3.2.2     Service of Notice of Violation and Supporting Documentation.**

14                                     **3.2.2.1**     Subject to Section 3.2.1, the Notice of Violation shall be sent to the  
15 person(s) identified in Section 7.2 to receive notices for Settling Defendant, and must be served  
16 within sixty (60) days of the later of the date the Covered Products at issue were purchased or  
17 otherwise acquired by CEH or the date that CEH can reasonably determine that the Covered  
18 Products at issue were manufactured, shipped, sold or offered for sale by Settling Defendant,  
19 provided, however, that CEH may have up to an additional sixty (60) days to send the Notice of  
20 Violation if, notwithstanding CEH’s good faith efforts, the test data required by Section 3.2.2.2  
21 below cannot be obtained by CEH from its laboratory before expiration of the initial sixty (60)  
22 day period.

23   **3.2.2.2**     The Notice of Violation shall, at a minimum, set forth: (a) the date  
24 the alleged violation was observed; (b) the location at which the Covered Products were offered  
25 for sale; (c) a description of the Covered Products giving rise to the alleged violation, including  
26 the name and address of the retail entity from which the sample was obtained and if available  
27 information that identifies the product lot; and (d) all test data obtained by CEH regarding the  
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1 Covered Products and supporting documentation sufficient for validation of the test results,  
2 including any laboratory reports, quality assurance reports and quality control reports associated  
3 with testing of the Covered Products.

4 3.2.3 Notice of Election of Response. No more than thirty (30) days after  
5 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to  
6 CEH stating whether it elects to contest the allegations contained in a Notice of Violation  
7 (“Notice of Election”). Failure to provide a Notice of Election within thirty (30) days of  
8 effectuation of service of a Notice of Violation shall be deemed an election to contest the Notice  
9 of Violation.

10 3.2.3.1 If a Notice of Violation is contested, the Notice of Election shall  
11 include all then-available documentary evidence regarding the alleged violation, including all test  
12 data, if any is available. Alternatively, if Settling Defendant is asserting the alternate compliance  
13 provision under Section 2.2, it shall provide all documentary evidence supporting its assertion,  
14 along with the identity of all of its direct or indirect customers of the Covered Products subject to  
15 the Notice of Violation about which it has actual knowledge. If Settling Defendant or CEH later  
16 acquires additional test or other data regarding the alleged violation, it shall notify the other Party  
17 and promptly provide all such data or information to the Party.

18 3.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and Settling  
19 Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of  
20 serving a Notice of Election contesting a Notice of Violation, and if no enforcement action or  
21 application has been filed by CEH pursuant to Section 3.1, Settling Defendant may withdraw the  
22 original Notice of Election contesting the violation and serve a new Notice of Election to not  
23 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay  
24 \$2,500 in addition to any payment required under this Consent Judgment. At any time, CEH may  
25 withdraw a Notice of Violation, in which case for purposes of this Section 3.2 the result shall be  
26 as if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of  
27 Violation results within thirty (30) days of a Notice of Election to contest, CEH may file an  
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1 enforcement motion or application pursuant to Section 3.1. In any such proceeding, CEH may  
2 seek whatever fines, costs, penalties, attorneys' fees, or other remedies are provided by law for  
3 failure to comply with the Consent Judgment.

4           3.2.5    Non-Contested Notices. If Settling Defendant elects to not contest the  
5 allegations in a Notice of Violation and Settling Defendant did not manufacture the Covered  
6 Product identified in the Notice of Violation, it shall identify on a confidential basis to CEH (by  
7 proper name, address of principal place of business, and telephone number) the person or entity  
8 that sold the Covered Products to Settling Defendant and the manufacturer or ingredient suppliers  
9 and other entities in the upstream chain of distribution of the Covered Product, provided that such  
10 information is reasonably available. In addition, Settling Defendant shall undertake corrective  
11 action(s) and make payments, if any, as set forth below.

12           3.2.5.1    Settling Defendant shall include in its Notice of Election a detailed  
13 description with supporting documentation of the corrective action(s) that it has undertaken or  
14 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,  
15 provide reasonable assurance that all Covered Products having the same lot number as that of the  
16 Covered Product identified in CEH's Notice of Violation will not be thereafter sold or offered for  
17 sale to California consumers. If Settling Defendant is conceding a failure to comply with the  
18 alternative compliance provisions of Section 2.2, such corrective actions shall additionally  
19 include, at a minimum, that Settling Defendant take reasonable steps to determine whether a  
20 direct or indirect customer is responsible for the violation (and, if the latter, to make reasonable  
21 inquiries to determine which indirect customer), to notify all such customers in writing that the  
22 Covered Products are not labeled for legal sale in California, and to supply the identity of all such  
23 customers to CEH. If there is a dispute over the corrective action, Settling Defendant and CEH  
24 shall meet and confer before seeking any remedy in court. In no case shall CEH issue more than  
25 one Notice of Violation per manufacturing lot of a type of Covered Product.

26           3.2.5.2    If the Notice of Violation is the first Notice of Violation received  
27 by Settling Defendant that was not successfully contested or withdrawn, no payment shall be

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1 required by Settling Defendant. If the Notice of Violation is the second, third, or fourth Notice of  
2 Violation received by Settling Defendant under Section 3.2.1 that was not successfully contested  
3 or withdrawn, then Settling Defendant shall pay \$10,000 for each Notice of Violation. If Settling  
4 Defendant has received more than four (4) Notices of Violation under Section 3.2.1 that were not  
5 successfully contested or withdrawn, then Settling Defendant shall pay \$17,500 for each Notice  
6 of Violation. If Settling Defendant produces with its Notice of Election test data for the Covered  
7 Product that: (i) was conducted prior to the date CEH purchased the Covered Product that is the  
8 subject of the Notice of Violation; (ii) was conducted on the same or same type of Covered  
9 Product; and (iii) demonstrates Lead levels below the Reformulation Level, then any payment  
10 under this Section shall be reduced by fifty percent (50%).

11           3.2.6    Payments. Any payments under Section 3.2 shall be made by check  
12 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a  
13 Notice of Election triggering a payment and which shall be used as reimbursement for costs for  
14 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse  
15 attorneys’ fees and costs incurred in connection with these activities.

16           3.3     **Repeat Violations.** If Settling Defendant has received four (4) or more Notices of  
17 Violation concerning the same type of Covered Product that were not successfully contested or  
18 withdrawn in any twelve (12) month period then, at CEH’s option, CEH may seek whatever  
19 fines, costs, penalties, attorneys’ fees, or other remedies that are provided by law for failure to  
20 comply with the Consent Judgment. Prior to seeking such relief, CEH shall meet and confer with  
21 Settling Defendant for at least thirty (30) days to determine if Settling Defendant and CEH can  
22 agree on measures that Settling Defendant can undertake to prevent future violations.

## 23 24    **4.     PAYMENTS**

25           4.1     **Payments by Settling Defendant.** Within five (5) days of the Effective Date,  
26 Settling Defendant shall pay the total sum of \$43,875 as a settlement payment as further set forth  
27 in this Section.

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1           4.2     **Allocation of Payments.** The total settlement amount for Settling Defendant shall  
2 be paid in four (4) separate checks in the amounts specified below and delivered as set forth  
3 below. Any failure by Settling Defendant to comply with the payment terms herein shall be  
4 subject to a stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each  
5 day the full payment is not received after the applicable payment due date set forth in Section 4.1.  
6 The late fees required under this Section shall be recoverable, together with reasonable attorneys'  
7 fees, in an enforcement proceeding brought pursuant to Section 3 of this Consent Judgment. The  
8 funds paid by Settling Defendant shall be allocated as set forth below between the following  
9 categories and made payable as follows:

10                     4.2.1     \$5,780 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).  
11 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §  
12 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health  
13 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty  
14 payment for \$4,335 shall be made payable to OEHHA and associated with taxpayer identification  
15 number 68-0284486. This payment shall be delivered as follows:

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

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

24                                     The CEH portion of the civil penalty payment for \$1,445 shall be made  
25 payable to the Center For Environmental Health and associated with taxpayer identification  
26 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero  
27 Street, San Francisco, CA 94117.

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1                   4.2.2   \$8,675 as a payment in lieu of civil penalty to CEH pursuant to Health &  
2 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH shall  
3 use such funds to continue its work educating and protecting people from exposures to toxic  
4 chemicals, including heavy metals. In addition, as part of its Community Environmental Action  
5 and Justice Fund, CEH will use four percent (4%) of such funds to award grants to grassroots  
6 environmental justice groups working to educate and protect people from exposures to toxic  
7 chemicals. The method of selection of such groups can be found at the CEH web site at  
8 www.ceh.org/justicefund. The payment pursuant to this Section shall be made payable to the  
9 Center For Environmental Health and associated with taxpayer identification number 94-  
10 3251981.

11                   4.2.3   \$29,420 as a reimbursement of a portion of CEH's reasonable attorneys'  
12 fees and costs. The attorneys' fees and cost reimbursement check shall be made payable to the  
13 Lexington Law Group and associated with taxpayer identification number 94-3317175. This  
14 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
15 94117.

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17 **5.       MODIFICATION AND DISPUTE RESOLUTION**

18                   5.1       **Modification.** This Consent Judgment may be modified from time to time by  
19 express written agreement of the Parties, with the approval of the Court, or by an order of this  
20 Court upon motion and in accordance with law.

21                   5.2       **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
22 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
23 modify the Consent Judgment.

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25 **6.       CLAIMS COVERED AND RELEASE**

26                   6.1       This Consent Judgment is a full, final, and binding resolution between CEH on  
27 behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries,

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1 affiliated entities that are under common ownership, directors, officers, employees, agents,  
2 shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to  
3 which Settling Defendant directly or indirectly distributes or sells Covered Products, including  
4 but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and  
5 licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on  
6 failure to warn about alleged exposure to Lead contained in Covered Products that were sold,  
7 distributed, or offered for sale by Settling Defendant prior to the Compliance Date.

8           6.2     CEH, for itself, its agents, successors, and assigns, releases, waives, and forever  
9 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream  
10 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or  
11 common law claims that have been or could have been asserted by CEH individually or in the  
12 public interest regarding the failure to warn about exposure to Lead arising in connection with  
13 Covered Products manufactured, distributed, or sold by Settling Defendant prior to the Effective  
14 Date.

15           6.3     Compliance with the terms of this Consent Judgment by Settling Defendant and  
16 Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant,  
17 Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure to  
18 warn about Lead in Covered Products manufactured, distributed, or sold by Settling Defendant  
19 after the Compliance Date.

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21     **7.     PROVISION OF NOTICE**

22           7.1     When CEH is entitled to receive any notice under this Consent Judgment, the  
23 notice shall be sent by first class and electronic mail to:

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Eric S. Somers  
Lexington Law Group  
503 Divisadero Street  
San Francisco, CA 94117  
esomers@lexlawgroup.com

7.2 When Settling Defendant is entitled to receive any notice under this Consent Judgment, the notice shall be sent by first class and electronic mail to:

Trenton H. Norris  
Arnold & Porter LLP  
Three Embarcadero Center, 10th Floor  
San Francisco, CA 94111  
trent.norris@aporter.com

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

**8. COURT APPROVAL**

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

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 of this Consent Judgment shall be governed by the laws of the State of California.

1     **10.     ATTORNEYS' FEES**

2             10.1     A Party who unsuccessfully brings or contests an action arising out of this Consent  
3 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs  
4 unless the unsuccessful Party has acted with substantial justification. For purposes of this  
5 Consent Judgment, the term substantial justification shall carry the same meaning as used in the  
6 Civil Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

7             10.2     Notwithstanding Section 10.1, a Party who prevails in a contested enforcement  
8 action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of  
9 Civil Procedure §1021.5 against a Party that acted with substantial justification. The Party  
10 seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and this  
11 provision shall not be construed as altering any procedural or substantive requirements for  
12 obtaining such an award.

13             10.3     Nothing in this Section 10 shall preclude a Party from seeking an award of  
14 sanctions pursuant to law.

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16     **11.     ENTIRE AGREEMENT**

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

6 12.1 This Court shall retain jurisdiction of this matter to implement or modify the  
7 Consent Judgment.  
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9 **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

10 13.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
11 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
12 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.  
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14 **14. NO EFFECT ON OTHER SETTLEMENTS**

15 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
16 against an entity that is not Settling Defendant on terms that are different than those contained in  
17 this Consent Judgment.  
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19 **15. EXECUTION IN COUNTERPARTS**

20 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
21 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
22 constitute one document.  
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24 **IT IS SO ORDERED, ADJUDGED,  
25 AND DECREED**

26  
27 Dated: \_\_\_\_\_  
28 \_\_\_\_\_  
Judge of the Superior Court

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**IT IS SO STIPULATED:**

Dated: <u>22 July</u> 2016	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>   _____ Signature  <u>CHARLIE PIZZANO</u> _____ Printed Name  <u>ASSOCIATE DIRECTOR</u> _____ Title
Dated: _____, 2016	<b>HISTON SWEET SPREADS LIMITED</b>  _____ Signature  _____ Printed Name  _____ Title

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**IT IS SO STIPULATED:**

Dated: _____, 2016	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>  _____ Signature  _____ Printed Name  _____ Title
Dated: <u>7/22</u> _____, 2016	<b>HISTON SWEET SPREADS LIMITED</b>  _____ Signature  _____ Printed Name  _____ Title