

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1501
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF SETTLEMENT

Please print or type required information Original Filing Supplemental Filing Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S)			
	DEFENDANT(S) INVOLVED IN SETTLEMENT			
CASE INFO	COURT DOCKET NUMBER		COURT NAME	
	SHORT CASE NAME			
REPORT INFO	INJUNCTIVE RELIEF			
	PAYMENT: CIVIL PENALTY		PAYMENT: ATTORNEYS FEES	PAYMENT: OTHER
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL		DATE SETTLEMENT SIGNED / /
	COPY OF SETTLEMENT MUST BE ATTACHED			
FILER INFO	NAME OF CONTACT			
	ORGANIZATION			TELEPHONE NUMBER ()
	ADDRESS			FAX NUMBER ()
	CITY	STATE	ZIP	E-MAIL ADDRESS

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

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Attorneys for Defendant Abbott Laboratories

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

22 AS YOU SOW,

23 Plaintiff,

24 v.

25 ABBOTT LABORATORIES,

26 Defendant.

Case No. RG16822576

[PROPOSED] CONSENT JUDGMENT

Assigned for All Purposes to:
Judge Winifred Smith
Dept. 21

1 This Consent Judgment is entered into by and between Plaintiff *As You Sow* (“Plaintiff”)
2 and Defendant Abbott Laboratories (“Defendant”), to resolve claims raised against Defendant in
3 the Complaint filed in the above-captioned action on July 8, 2016, and in the amended complaint
4 filed on January 4, 2019. This Consent Judgment shall be effective upon entry. *As You Sow* and
5 Defendant (collectively “the Parties,” and separately a “Party”) agree to the terms and conditions
6 set forth below.

7 **1. INTRODUCTION**

8 **1.1** *As You Sow* is a non-profit corporation dedicated to, among other causes, the
9 protection of the environment, the promotion of human health, the improvement of worker and
10 consumer rights, environmental education, and corporate accountability. *As You Sow* is based in
11 Oakland, California, and is incorporated under the laws of the State of California.

12 **1.2** Defendant produces, distributes, and/or sells ZonePerfect Nutrition Bar Double
13 Dark Chocolate (“Double Dark Chocolate Bar”) and ZonePerfect Nutrition Bar Dark Chocolate
14 Almond (“Dark Chocolate Almond Bar”) (collectively, the “Covered Products”) in California.

15 **1.3** *As You Sow* alleges in the Complaint that the Covered Products contain lead,
16 which is a chemical listed by the State of California as known to cause birth defects or other
17 reproductive harm pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986
18 (“Proposition 65”), California Health and Safety Code §25249.5 *et seq.*

19 **1.4** On September 25, 2015 and August 11, 2017, *As You Sow* sent 60-day Notices
20 of Violation to Defendant and to public enforcers as required by Health and Safety Code section
21 25249.7, alleging that Defendant violated Proposition 65 by failing to provide clear and reasonable
22 warnings before exposing persons to lead contained in the Double Dark Chocolate Bar and Dark
23 Chocolate Almond Bar, respectively.

24 **1.5** The Parties agree that the September 25, 2015 Notice of Violation covers only
25 the Double Dark Chocolate Bar and that the August 11, 2017 Notice of Violation covers only the
26 Dark Chocolate Almond Bar. The Parties further agree that neither of those Notices pertain to any
27 other nutrition, snack, meal replacement, or protein bars that are manufactured, distributed, or sold
28 by Abbott. The Parties also agree that past, present, or future nutrition, snack, meal replacement,

1 or protein bars containing chocolate that are manufactured, distributed, or sold by Abbott, other
2 than the Covered Products, are subject to the provisions of the Consent Judgment in *As You Sow v.*
3 *Trader Joe's Co., et al.*, San Francisco County Superior Court, Case No. CGC-15-548791 (Feb.
4 15, 2018) ("Trader Joe's Consent Judgment") insofar as the provisions are applicable to the
5 ingredients contained in those bars, and the Trader Joe's Consent Judgment remains in effect.

6 **1.6** The Parties have agreed to enter into this Consent Judgment to settle Plaintiff's
7 claims with regard to the Covered Products and to avoid further litigation and the attendant time
8 and resources such litigation would require.

9 **1.7** Defendant denies the material allegations contained in the Notices, Complaint,
10 and Amended Complaint and maintains that it has not violated Proposition 65. Nothing in this
11 Consent Judgment shall be construed as an admission by Defendant of any fact, finding, issue of
12 law, or violation of law; nor shall compliance with this Consent Judgment constitute or be
13 construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation
14 of law, such being specifically denied by Defendant. However, this section shall not diminish or
15 otherwise affect the obligations, responsibilities, and duties of Defendant under this Consent
16 Judgment.

17 **1.8** The only products covered by this Consent Judgment are the Covered
18 Products, and the only chemical covered by this Consent Judgment is lead as it relates to the
19 Covered Products. *As You Sow* is not aware of any other chemical in either of the Covered
20 Products that would require a warning under Proposition 65.

21 **2. JURISDICTION AND VENUE**

22 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over the allegations contained in the Complaint and Amended Complaint and personal
24 jurisdiction over Defendant; venue is proper in Alameda County; the Court has jurisdiction to
25 enter this Consent Judgment as a full and final resolution of all Proposition 65 claims up through
26 and including the Effective Date as to the Covered Products; and the Court shall retain jurisdiction
27 to enforce this Consent Judgment.

28 **3. DEFINITIONS**

- 1 **3.1** “Compliance Date” means the date 30 days after the Effective Date.
- 2 **3.2** “Effective Date” means the date the Court enters this Consent Judgment.
- 3 **3.3** “Lot” means all units of a Covered Product bearing the same lot number, best-
4 by, or sell-by date.

5 **4. LEAD CONCENTRATION LIMITS AND TESTING**

6 **4.1** The “Lead Concentration Limit” for the Covered Products shall be 0.0355
7 parts per million. The maximum size of the Covered Products shall be 45 grams per bar.

8 **4.2** When testing the Covered Products for lead concentration under this Section 4,
9 Defendant shall randomly select 10 samples of each of the Covered Products. The randomly
10 selected samples for each Covered Product shall come from separate Lots that are randomly
11 chosen, to the extent that the necessary number of lots are available. These samples shall be
12 identified in Defendant’s request to the laboratory for testing as being submitted pursuant to this
13 Consent Judgment. Defendant shall also be permitted to perform up to two replicate tests on each
14 of the samples of the Covered Products that are tested. Except as set forth in Paragraph 4.4, if
15 Defendant chooses to perform replicate tests, Defendant must perform the same number of
16 replicate tests on each of the 10 randomly selected samples. The arithmetic mean of the original
17 test result and the replicate test result(s) shall be the effective result for each of the samples.

18 **4.3** Defendant shall test each of the Covered Products for lead concentration
19 within 30 days of the Compliance Date and then once every year for three more years. For
20 purposes of determining whether a Covered Product is above or below the Lead Concentration
21 Limit, the arithmetic mean of the sample test results for that Covered Product shall be compared to
22 the Lead Concentration Limit. The testing conducted pursuant to this Section 4, and the
23 comparison conducted pursuant to this Paragraph 4.3, shall be the sole means of determining
24 whether the Covered Products are above or below the Lead Concentration Limit.

25 **4.4** If the result of the testing of any of the 10 samples collected pursuant to 4.2
26 above exceeds 0.044 parts per million of lead for that sample, the result shall be deemed a
27 potential “outlier” test result. At Abbott’s option, any single potential outlier test result may be
28 subject to validation before it is deemed to be an effective result for purposes of this Consent

1 Judgment. The validation process shall consist of two steps:

2 (a) First, the laboratory from which the test result in question was obtained
3 shall be required to check its equipment, test processes, validation procedures, potential laboratory
4 contamination, potential operator error, and any other factors which could have produced an
5 erroneous result. If the result is determined by the laboratory to be erroneous due to testing error
6 or failure to satisfy quality assurance or quality control procedures, the result shall be discarded
7 and not used for any purpose under this Consent Judgment. Any testing result that has been
8 discarded under this paragraph 4.4(a) must be replaced with a new test result taken from the
9 original sample of the Covered Product, which must be obtained within 30 days of the date that
10 the original testing result is discarded.

11 (b) Second, if the steps in paragraph 4.4(a) have not invalidated a potential
12 outlier test result, Defendant, at its option, may test up to two additional randomly selected
13 samples of the Covered Product from the same Lot as the sample that is the source of the potential
14 outlier test result. The arithmetic mean of the two additional test results (for the two additional
15 randomly selected samples from the same Lot) and the original potential outlier test result shall be
16 deemed the “final validated result” for that sample and shall replace the original potential outlier
17 test result as the effective result for that sample for purposes of this Consent Judgment. If Abbott
18 chooses not to exercise its option to test additional samples pursuant to this paragraph 4.4(b)
19 within 60 days of receiving the original testing result, the potential outlier testing result shall be
20 deemed the final validated result for that sample.

21 4.5 If the arithmetic mean of all of the sample test results, as discussed in 4.3 above, for
22 a Covered Product exceeds the Lead Concentration Limit of 0.0355 parts per million, Defendant
23 shall have 240 days from the date of completing the testing required under Section 4.3 to reduce
24 the lead concentration levels in that Covered Product. Defendant may, within this time period,
25 establish for purposes of Paragraph 4.3 that the lead concentration levels do not exceed the Lead
26 Concentration Limit by conducting an additional round of testing that complies with the
27 requirements of this Section 4. If Defendant elects to perform this additional testing, the
28 assessment of whether the lead concentration levels in that Covered Product do or do not exceed

1 the Lead Concentration Limit will not be final for purposes of this Section 4 until that additional
2 testing is complete within this 240 day period. If, after the 240 day period has ended and the
3 additional testing set forth in this paragraph have been completed, the additional test results
4 demonstrate that the arithmetic mean of such test results is above the Concentration Limit set forth
5 in paragraph 4.1, Defendant shall make an election to either cease distribution of the Covered
6 Product or provide a warning for that Covered Product as provided for in Section 5 below.

7 **4.6** Testing pursuant to this Section 4 shall be conducted on Covered Products that are
8 in final form and intended for sale to the end-user.

9 **4.7** Testing pursuant to this Section 4 shall be performed using the analytical methods
10 set forth in AOAC Method 2015.01 or EPA Methods 6020, 6020a, as those test methods might be
11 reasonably modified by the laboratory. The laboratory must digest at least 0.5 grams of each
12 sample with a level of detection, and a reporting limit, of at least 10 parts per billion. The sample
13 preparation method must use a microwave- or heat-assisted acid digestion method.

14 **4.8** Testing pursuant to this Section 4 shall be performed by an independent third-party
15 laboratory certified by the California Environmental Laboratory Accreditation Program for the
16 analysis of heavy metals or an independent third-party laboratory registered with the
17 Environmental Protection Agency.


18 **4.9** Defendant shall retain all test results and documentation of testing for lead
19 concentration in the Covered Products for a period of at least three years from the date of the test.

20 **4.10** Within 60 days of the Compliance Date and each year thereafter within 60 days of
21 the anniversary of the Compliance Date, *As You Sow* may submit a written request for copies of
22 the results of any testing for lead concentration in the Covered Products. Defendant agrees to
23 deliver full laboratory reports with the results of any testing for lead concentration in the Covered
24 Products pursuant to this Section, including all accompanying quality assurance/quality control
25 (“QA/QC”) documentation, to *As You Sow* within 30 days of the date that Defendant receives *As*
26 *You Sow’s* written request. *As You Sow* shall keep these test results and information confidential,
27 except as may be necessary to enforce this Consent Judgment, subject to the terms of the
28 protective order in this case. Defendant agrees to notify *As You Sow* of its election to use any of

1 the replicate or additional testing provisions set forth in this Section 4 at the time it delivers any
2 initial test results.

3 **5. WARNING STATEMENT**

4 **5.1** Following testing pursuant to Section 4 of this Consent Judgment, Defendant
5 shall within 30 days after the 240 day period set forth in Section 4.5, either (i) cease the
6 distribution of that Covered Product or (ii) include a Proposition 65 warning consistent with the
7 requirements of this Section, if the lead concentration in that Covered Product as determined under
8 Section 4 exceeds the Lead Concentration Limit. If Defendant continues to distribute that
9 Covered Product and therefore to include a Proposition 65 warning pursuant to this Section 5.1,
10 the individual bar and box packaging for the Covered Product shall contain the following Warning
11 Statement:

12  **WARNING:** This product can expose you to lead, which is known to the State of
13 California to cause birth defects or other reproductive harm. For more information, go to
14 www.P65Warnings.ca.gov.

14 **5.2** When a warning is required pursuant to Paragraph 5.1, the Warning Statement
15 shall be prominently affixed to the Covered Products' individual bar and box packaging. In
16 compliance with 27 Cal. Code of Regulations Section 25601(c), the Warning Statement shall be
17 displayed with such conspicuousness, as compared with other words, statements, designs, or
18 devices on the packaging so as to render it likely to be read and understood by an ordinary
19 individual under customary conditions of purchase and use.

20 **5.3** If Defendant sells the Covered Products via an internet site controlled by
21 Defendant to customers located in California, and a Warning Statement is required under
22 Paragraph 5.1, Defendant shall, in addition to complying with the labeling requirements in
23 Paragraph 5.2, prominently display the Warning Statement on the internet site in conjunction with
24 the Covered Products as set forth below. Such a statement shall be displayed in the same type size
25 as the surrounding, non-heading text, either: (a) on the same page, without scrolling, as the
26 description of the Covered Products; (b) on the same page, without scrolling, as the order form for
27 the Covered Products; (c) on the same page, without scrolling, as the price for the Covered
28 Products; or (d) in a dialogue box that appears and is visible when a California address for

1 delivery is provided by the consumer, so long as the dialogue box appears prior to completion of
2 the internet sale and requires the consumer to affirmatively accept receipt of the statement set forth
3 in the dialogue box as a condition precedent to completing the sale. For purposes of option (d),
4 the text of the statement shall be displayed in the same type size as the surrounding, non-heading
5 text on the screen at the time of the appearance of the dialogue box.

6 **5.4** If Defendant sells the Covered Products through the website of any internet
7 retailer, and a Warning Statement is required under Paragraph 5.1, Defendant shall send by first
8 class mail or overnight delivery, no more than two weeks after a determination that a Warning
9 Statement is required, a letter requesting that the internet retailer provide the Warning Statement in
10 Paragraph 5.1 in the same manner as required under Paragraph 5.3. The letter shall state that
11 failure to provide this statement may result in liability for the internet retailer. In the letter,
12 Defendant shall request that the internet retailer respond with a written acknowledgement that it
13 will comply with Defendant's request.

14 **5.5** If Defendant sells the Covered Products via mail order to customers located in
15 California, and a Warning Statement is required under Paragraph 5.1, Defendant shall prominently
16 display the Warning Statement in the mail order catalogue in conjunction with the Covered
17 Products. The Warning Statement shall appear either on the same page on which the Covered
18 Products are displayed, or on the same page upon which the Covered Products' prices are listed, in
19 the same type size as the surrounding, non-heading text. The Warning Statement shall be added in
20 the first print run of the mail order catalogue on or after the Compliance Date or such later time as
21 it is determined a Warning Statement is required.

22 **5.6** Any changes to the text, format, or placement of the Warning Statement
23 required under Paragraphs 5.1 – 5.5 shall be made only after Court approval and following written
24 notice to Plaintiff and to the Attorney General.

25 **6. SETTLEMENT PAYMENTS**

26 **6.1 Civil Penalty:** Within thirty days of the Effective Date, Defendant shall pay
27 \$15,000 in the form of a check made payable to *As You Sow*, as a civil penalty pursuant to Health
28 and Safety Code section 25249.7(b). *As You Sow* shall remit seventy-five percent (75%) of this

1 amount to the State of California pursuant to Health and Safety Code section 25249.12(b).

2 **6.2** Additional Settlement Payment: Within thirty days of the Effective Date,
3 Defendant shall pay \$10,000 in the form of a check made payable to *As You Sow*, with this amount
4 to be used by *As You Sow* for grants to California 501(c)(3) non-profit organizations and by the *As*
5 *You Sow* Environmental Enforcement Fund. These funds shall be used to educate and/or reduce or
6 remediate consumer exposures to toxic chemicals such as lead and to increase consumer, worker,
7 and community awareness of the health hazards posed by toxic chemicals in California. In
8 deciding among grant proposals, the *As You Sow* Board of Directors (“Board”) takes into
9 consideration a number of important factors, including: (1) the nexus between the harm done in
10 the underlying case(s) and the grant program work; (2) the potential for toxics reduction,
11 prevention, remediation, or educational benefits to California citizens from the proposal; (3) the
12 budget requirements of the proposed grantee and the alternate funding sources available to it for
13 its project; and, (4) the Board’s assessment of the proposed grantee’s ability to perform the funded
14 activities. *As You Sow* shall ensure that all funds will be disbursed and used in accordance with
15 this paragraph, as well as *As You Sow*’s mission statement, articles of incorporation, bylaws, and
16 applicable state and federal laws and regulations. *As You Sow* shall obtain and maintain adequate
17 records to document that the funds are spent on the activities described in this paragraph, and shall
18 provide to the Attorney General, within thirty days of any request, copies of all documentation
19 demonstrating how such funds have been spent. No Party to this Consent Judgment or counsel of
20 record, or spouse or dependent child thereof, has an economic interest in any individual or entity,
21 besides itself, that will receive all or part of an Additional Settlement Payment.

22 **6.3** Within thirty days of the Effective Date, Defendant shall pay \$325,000 in the
23 form of a check made payable to Altshuler Berzon LLP, as reimbursement for Plaintiff’s
24 attorneys’ fees, investigation costs, and other reasonable litigation costs and expenses.

25 **7. MODIFICATION OF THIS CONSENT JUDGMENT**

26 **7.1** This Consent Judgment may only be modified by written agreement and
27 stipulation of the Parties. If either Party seeks to modify the Consent Judgment, then it shall
28 provide written notice to the other Party, and the Parties shall meet and confer within 30 days of

1 receipt of such meet and confer notice. Neither Party shall unreasonably withhold agreement to
2 any modification requested by the other Party based on an amendment to Proposition 65 or its
3 supporting regulations or a change in the law. If despite their meet-and-confer efforts, the Parties
4 are unable to reach agreement on a stipulated modification, either Party may file a noticed motion
5 for modification with the Court for good cause shown, provided a copy of the motion is also
6 served on the other Party and the Attorney General.

7 7.2 If the Parties reach agreement as to modification of the Consent Judgment,
8 such stipulation shall be reported to the Attorney General at least 21 days in advance of its
9 submission to the Court for approval.

10 **8. DISPUTE RESOLUTION AND ENFORCEMENT**

11 The Parties may, by motion filed in this Court, enforce the terms and conditions of this
12 Consent Judgment. In the event a dispute arises with respect to any of the provisions of this
13 Consent Judgment, and prior to the filing of any such motion, the Parties shall meet and confer
14 within 14 days after either Party receives written notice of an alleged violation of this Consent
15 Judgment or other dispute.

16 **9. CLAIMS COVERED AND RELEASE**

17 This Consent Judgment is a full, final, and binding resolution between Plaintiff, on behalf
18 of itself and in the public interest, as well as Plaintiff's parents, subsidiaries, officers, directors,
19 employees, agents, insurers, representatives, successors and assigns ("*As You Sow* Releasees"),
20 and Defendant and its respective officers, directors, shareholders, employees, agents, parent
21 companies, subsidiaries, affiliates, divisions, franchisees, licensees, customers, distributors,
22 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of
23 the Covered Product, and the predecessors, successors, and assigns of any of them (collectively,
24 "Defendant's Releasees"). Plaintiff hereby fully releases and discharges Defendant's Releasees
25 from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties,
26 fees (including fees of attorneys, experts, and others), costs, and expenses asserted, or that could
27 have been asserted from the handling, use, or consumption of the Covered Products, as to any
28 alleged violation of Proposition 65 or its implementing regulations arising from the failure to

1 provide Proposition 65 warnings on the Covered Products regarding lead up to and including the
2 Effective Date, other than as set forth in this Consent Judgment. Defendant hereby releases *As*
3 *You Sow* from, and waives any claims against *As You Sow* and *As You Sow* Releasees for
4 injunctive relief or damages, penalties, fines, sanctions, mitigation, fees (including attorneys' fees,
5 experts and others), costs, expenses, or any other sum incurred or claimed or which could have
6 been claimed for matters related to the Notices of Violation or Complaint.

7 **10. GOVERNING LAW AND CONSTRUCTION**

8 This Consent Judgment shall be governed by, and construed in accordance with, the laws
9 of the State of California.

10 **11. COURT APPROVAL**

11 **11.1** Unless otherwise stipulated by the Parties, the Court shall either approve or
12 disapprove of this Consent Judgment in its entirety, without alteration, deletion or amendment.

13 **11.2** Unless otherwise stipulated by the Parties, if the Court fails to approve and
14 order entry of the Consent Judgment without any alteration, deletion or amendment, this Consent
15 Judgment shall become null and void upon the election of either Party, and shall not be introduced
16 into evidence or otherwise used in any proceeding for any purpose.

17 **12. ENTIRE AGREEMENT**

18 The Parties declare and represent that no promise, inducement or other agreement has been
19 made conferring any benefit upon any Party except those contained herein and that this agreement
20 contains the entire agreement pertaining to the subject matter hereof.

21 **13. APPLICATION OF CONSENT JUDGMENT**

22 This Consent Judgment shall apply to, be binding upon, and benefit the Parties and their
23 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
24 divisions, franchisees, licensees, customers, distributors, wholesalers, retailers, predecessors,
25 successors, and assigns.

26 **14. ATTORNEYS' FEES**

27 Except as specifically provided in this Consent Judgment, each Party shall bear its own
28 attorneys' fees and costs incurred in connection with the 60-day Notices of Violation and

1 Plaintiff's Complaint and Amended Complaint.

2 **15. COMPLIANCE WITH HEALTH AND SAFETY CODE §25249.7**

3 Plaintiff shall comply with the reporting requirements referred to in Health and Safety
4 Code section 25249.7(f) (and established in Title 11 of the Code of Regulations sections 3000-
5 3008), and shall move for approval of this Consent Judgment pursuant to the terms thereof.

6 The Parties shall use their best efforts to support entry of this Consent Judgment. If the
7 Attorney General objects to any term in this Consent Judgment, the Parties shall use their best
8 efforts to resolve the concern in a timely manner, and if possible, prior to the hearing on the
9 motion to approve this Consent Judgment.

10 **16. PROVISION OF NOTICE**

11 All correspondence and notices required by this Consent Judgment to the Parties shall be
12 sent to:

13 Plaintiff As You Sow

14 *As You Sow* Foundation
15 Attn: Danielle Fugere, President and Chief Counsel
16 1611 Telegraph Street, Suite 1450
Oakland, CA 94612
Tel.: (510) 735-8158

17 With a copy to:

18 Barbara Chisholm
19 Danielle Leonard
20 Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108
21 Tel.: (415) 421-7151

22 Defendant Abbott Laboratories

23 Patrick Cafferty
24 Miriam Kim
25 Allison Day
26 Munger, Tolles & Olson
560 Mission Street
Twenty-Seventh Floor
San Francisco, CA 94105-2907
Tel.: (415) 512-4000

27 Ellen Richmond
28 Conrad & Metlitzky
Four Embarcadero Center, Suite 1400

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17. TERM

This Consent Judgment shall remain in effect through and until seven years after the Effective Date. If one party seeks to maintain the Consent Judgment in this matter in effect thereafter, that party shall send a written notice requesting a meet and confer and such meet and confer shall occur within 45 days of such notice. If the parties do not reach agreement on extending the duration of the Consent Judgment, then the party requesting the extension may file a motion seeking that extension following the procedure set forth in Section 7.1. Upon termination of this Consent Judgment pursuant to the terms of this section, the Parties agree that the Covered Products shall become subject to the Trader Joe’s Consent Judgment insofar as the provisions are applicable to the ingredients in those bars, and the Trader Joe’s Consent Judgment remains in effect.

18. EXECUTION AND COUNTERPARTS

This Consent Judgment may be executed in one or more counterparts and by means of facsimile or portable document format (.pdf), which taken together shall be deemed to constitute one document.

19. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn, and no provision of this Consent Judgment shall be construed against any Party, based on the fact that one of the Parties and/or one of the Parties’ legal counsel prepared and/or drafted all or any portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated equally in the preparation and drafting of this Consent Judgment.

20. AUTHORIZATION

Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the

1 Consent Judgment on behalf of the Party represented and legally bind that Party. The undersigned
2 have read, understand, and agree to all of the terms and conditions of this Consent Judgment.
3

4 **APPROVED AS TO FORM:**

5
6 Dated: 1/4, 2018

ALTSHULER BERZON LLP

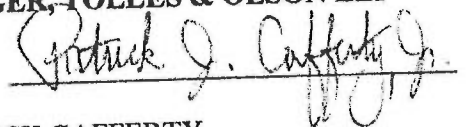
By: 

BARBARA J. CHISHOLM
DANIELLE LEONARD
ALTSHULER BERZON LLP

Attorneys for Plaintiff AS YOU SOW

13
14 Dated: 12/31, 2018


MUNGER, TOLLES & OLSON LLP

By: 

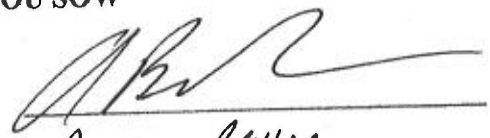
PATRICK CAFFERTY
MIRIAM KIM
ALLISON DAY

Attorneys for Defendant ABBOTT LABORATORIES

19 **SO AGREED:**

20
21
22 Dated: 1/3, 2018 

AS YOU SOW

By: 

Name: Andrew BEHAR
Title: CEO

26
27
28

1 Dated: Dec. 28, 2018

ABBOTT LABORATORIES

2 By: Robert S. O'Meara

3 Name: Robert S. O'Meara

4 Title: Senior Counsel

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[PROPOSED] ORDER

IT IS SO ORDERED AND ADJUDGED:

The Court hereby incorporates the terms of this Consent Judgment into this Order. The Court retains jurisdiction over this matter.

Dated: _____, 2019

HON. _____
JUDGE OF THE SUPERIOR COURT