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

CENTER FOR ENVIRONMENTAL HEALTH,)	Case No. RG 16-829822
)	
Plaintiff,)	[PROPOSED] CONSENT JUDGMENT
)	AS TO MAYA KAIMAL FINE INDIAN
v.)	FOODS, LLC
)	
ACH FOOD COMPANIES, INC., <i>et al.</i> ,)	
)	
Defendants.)	
)	
)	
)	

1. INTRODUCTION

1.1 The Parties to this Consent Judgment are the Center For Environmental Health (“CEH”), a California non-profit corporation, and Maya Kaimal Fine Indian Foods, LLC (“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

1 the lead content of Indian pastes and sauces containing ginger (“Covered Products”) that are sold,
2 distributed or offered for sale by Settling Defendant in the State of California.

3 1.2 On June 14, 2016, CEH provided a 60-day Notice of Violation of Proposition 65
4 to the California Attorney General, the District Attorneys of every county in California, the City
5 Attorneys of every California city with a population greater than 750,000 and to Settling
6 Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons to lead
7 and lead compounds (“Lead”) contained in Covered Products without first providing a clear and
8 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.

11 1.4 On September 2, 2016, CEH filed the Complaint in the above-captioned matter,
12 naming Settling Defendant as a defendant in the action.

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

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

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brought exclusively pursuant to this Section 3, and be subject to the meet and confer requirement of Section 3.2.4 if applicable.

3.2 Enforcement of Reformulation Commitment.

3.2.1 Notice of Violation. In the event that CEH identifies a Covered Product that was manufactured after March 1, 2017 (as determined by the sell by date) for which CEH has laboratory test results showing that the Covered Product has a Lead level exceeding the Reformulation Level, CEH may issue a Notice of Violation pursuant to this Section.

3.2.2 Service of Notice of Violation and Supporting Documentation.

A Notice of Violation issued pursuant to Section 3.2.1 shall be sent to the person(s) identified in Section 7.2 to receive notices for Settling Defendant, and must be served within sixty (60) days of the date the Covered Products at issue were purchased or otherwise acquired by CEH, provided, however, that CEH may have up to an additional sixty (60) days to send the Notice of Violation if, notwithstanding CEH's good faith efforts, the test data required by Section 3.2.2.2 below cannot be obtained by CEH from its laboratory before expiration of the initial sixty (60) day period.

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

3.2.3 Notice of Election of Response. No more than thirty (30) days after effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to CEH whether it elects to contest the allegations contained in a Notice of Violation ("Notice of

1 Election”). Failure to provide a Notice of Election within thirty (30) days of effectuation of
2 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.

3 If a Notice of Violation is contested, the Notice of Election shall
4 include all then-available documentary evidence regarding the alleged violation, including all test
5 data, if any is available, and any information regarding the date that Settling Defendant
6 purchased, manufactured, shipped, sold or offered for sale in California the Covered Product that
7 is the subject of the Notice of Violation. If Settling Defendant or CEH later acquires additional
8 test or other data regarding the alleged violation, it shall notify the other party and promptly
9 provide all such data or information to the party.

10 If Settling Defendant provides CEH with information establishing that
11 Settling Defendant purchased, manufactured, shipped, sold or offered for sale in California the
12 Covered Product that is the subject of the Notice of Violation prior to the Effective Date, CEH
13 shall withdraw the Notice of Violation, in which case for purposes of this Section 3.2 the result
14 shall be as if CEH never issued any such Notice of Violation.

15 3.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and Settling
16 Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of
17 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw
18 the original Notice of Election contesting the violation and serve a new Notice of Election to not
19 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay
20 \$2,500 in addition to any payment required under this Consent Judgment. At any time, CEH may
21 withdraw a Notice of Violation, in which case for purposes of this Section 3.2 the result shall be
22 as if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of
23 Violation results within thirty (30) days of a Notice of Election to contest, CEH may file an
24 enforcement motion or application pursuant to Section 3.1. In any such proceeding, CEH may
25 seek whatever fines, costs, penalties, attorneys’ fees or other remedies are provided by law for
26 failure to comply with the Consent Judgment.

1 3.2.5 Non-Contested Notices. If Settling Defendant elects to not contest the
2 allegations in a Notice of Violation, it shall undertake corrective action(s) and make payments, if
3 any, as set forth below.

4 Settling Defendant shall include in its Notice of Election a detailed
5 description with supporting documentation of the corrective action(s) that it has undertaken or
6 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,
7 provide reasonable assurance that all Covered Products having the same lot number as that of the
8 Covered Product identified in CEH's Notice of Violation (the "Noticed Covered Products") will
9 not be thereafter sold or offered for sale to California consumers, that the Noticed Covered
10 Products are removed from the California market and that Settling Defendant has sent instructions
11 to any of its stores and/or customers that offer the Noticed Covered Products for sale to cease
12 offering the Noticed Covered Products for sale to California consumers and to either return all
13 such Noticed Covered Products to Settling Defendant for destruction, or to directly destroy such
14 Noticed Covered Products. Settling Defendant shall keep and make available to CEH for
15 inspection and copying records of any correspondence regarding the market withdrawal and
16 destruction of the Noticed Covered Products. If there is a dispute over the corrective action,
17 Settling Defendant and CEH shall meet and confer before seeking any remedy in court. In no
18 case shall CEH issue more than one Notice of Violation per manufacturing lot of a type of
19 Covered Product.

20 If the Notice of Violation is the first, second, third or fourth Notice of Violation received by
21 Settling Defendant under Section 3.2.1 that was not successfully contested or withdrawn, then
22 Settling Defendant shall pay \$10,000 for each Notice of Violation. If Settling Defendant has
23 received more than four (4) Notices of Violation under Section 3.2.1 that were not successfully
24 contested or withdrawn, then Settling Defendant shall pay \$20,000 for each Notice of Violation.
25 If Settling Defendant produces with its Notice of Election test data for the Covered Product that:
26 (i) was conducted in the year prior to the date CEH purchased the Covered Product that is the
27 subject of the Notice of Violation; (ii) was conducted on the Covered Product that was the subject

of the Notice of Violation; and (iii) demonstrates Lead levels below the Reformulation Level, then any payment under this Section shall be reduced by fifty percent (50%).

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

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

4. PAYMENTS

4.1 **Payments by Settling Defendant.** Settling Defendant shall pay the total sum of \$50,000 as a settlement payment which shall be allocated and paid as further set forth in this Section and on Exhibit A.

4.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall be paid in two payments each consisting of five separate checks in the amounts specified on Exhibit A and delivered as set forth below and on Exhibit A. Any failure by Settling Defendant to comply with the payment terms herein shall be subject to a stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each day the full payment is not received after the applicable payment due date. The late fees required under this Section shall be recoverable, together with reasonable attorneys’ fees, in an enforcement proceeding brought pursuant to Section 3 of this Consent Judgment. The funds paid by Settling Defendant shall be allocated as set forth below between the following categories and made payable as follows:

1 4.2.1 Defendant shall pay a civil penalty pursuant to Health & Safety Code
2 §25249.7(b) in the amounts and on due dates set forth on Exhibit A. The civil penalty payment
3 shall be apportioned in accordance with Health & Safety Code §25249.12 (25% to CEH and 75%
4 to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")).
5 Accordingly, the OEHHA portion of the civil penalty payments set forth on Exhibit A shall be
6 made payable to OEHHA and associated with taxpayer identification number 68-0284486. These
7 payments shall be delivered as follows:

8 For United States Postal Service Delivery:

9 Attn: Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
 P.O. Box 4010, MS #19B
 Sacramento, CA 95812-4010

12 For Non-United States Postal Service Delivery:

13 Attn: Mike Gyurics
14 Fiscal Operations Branch Chief
 Office of Environmental Health Hazard Assessment
 1001 I Street, MS #19B
 Sacramento, CA 95814

15
16 The CEH portion of the civil penalty payments set forth on Exhibit A shall be made payable to
17 the Center for Environmental Health and associated with taxpayer identification number 94-
18 3251981. These payments shall be delivered to Lexington Law Group, 503 Divisadero Street,
19 San Francisco, CA 94117.

20 4.2.2 Defendant shall pay an Additional Settlement Payment ("ASP") to CEH
21 pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, §
22 3204 in the amounts and on due dates set forth on Exhibit A. CEH intends to place these funds in
23 CEH's Toxics in Food Fund and use them to support CEH programs and activities that seek to
24 educate the public about lead and other toxic chemicals in food, to work with the food industry
25 and agriculture interests to reduce exposure to lead and other toxic chemicals in food, and to
26 thereby reduce the public health impacts and risks of exposure to lead and other toxic chemicals
27 in food sold in California. CEH shall obtain and maintain adequate records to document that

1 ASPs are spent on these activities and CEH agrees to provide such documentation to the Attorney
2 General within thirty days of any request from the Attorney General. The payments pursuant to
3 this Section shall be made payable to the Center for Environmental Health and associated with
4 taxpayer identification number 94-3251981. These payments shall be delivered to Lexington
5 Law Group, 503 Divisadero Street, San Francisco, CA 94117.

6 4.2.3 Defendant shall pay a reimbursement of a portion of CEH's reasonable
7 attorneys' fees and costs in the amounts and on due dates set forth on Exhibit A. Each of the
8 attorneys' fees and cost reimbursement payments shall be made in separate checks: the first
9 payable to the Center For Environmental Health and associated with taxpayer identification
10 number 94-3251981; and the second payable to the Lexington Law Group and associated with
11 taxpayer identification number 94-3317175. These payments shall be delivered to Lexington
12 Law Group, 503 Divisadero Street, San Francisco, CA 94117.

13 **5. MODIFICATION AND DISPUTE RESOLUTION**

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

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

20 **6. CLAIMS COVERED AND RELEASE**

21 6.1 Provided that Settling Defendant complies in full with its obligations under Section
22 4 hereof, this Consent Judgment is a full, final and binding resolution between CEH on behalf of
23 itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities
24 that are under common ownership, directors, officers, employees, agents, shareholders,
25 successors, assigns, and attorneys ("Defendant Releasees"), and all entities to which Settling
26 Defendant distributes or sells Covered Products, such as distributors, wholesalers, customers,
27 retailers, franchisees, licensors and licensees, including Defendant Sunflower Farmers Markets,

1 LLC (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to
2 warn about alleged exposure to Lead contained in Covered Products that were sold, distributed or
3 offered for sale by Settling Defendant prior to the Effective Date.

4 6.2 Provided that Settling Defendant complies in full with its obligations under Section
5 4 hereof, CEH, for itself, its agents, successors and assigns, releases, waives and forever
6 discharges any and all claims against Settling Defendant, Defendant Releasees and Downstream
7 Defendant Releasees, including Defendant Sunflower Farmers Markets, LLC, arising from any
8 violation of Proposition 65 or any other statutory or common law claims that have been or could
9 have been asserted by CEH individually or in the public interest regarding the failure to warn
10 about exposure to Lead arising in connection with Covered Products manufactured, distributed or
11 sold by Settling Defendant prior to the Effective Date.

12 6.3 Provided that Settling Defendant complies in full with its obligations under
13 Section 4 hereof, compliance with the terms of this Consent Judgment by Settling Defendant and
14 Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant,
15 Defendant Releasees and Downstream Defendant Releasees with respect to any alleged failure to
16 warn about Lead in Covered Products manufactured, distributed or sold by Settling Defendant
17 after the Effective Date.

18 **7. PROVISION OF NOTICE**

19 7.1 When CEH is entitled to receive any notice under this Consent Judgment, the
20 notice shall be sent by first class and electronic mail to:

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

26 7.2 When Settling Defendant is entitled to receive any notice under this Consent
27 Judgment, the notice shall be sent by first class and electronic mail to:

28 Samir J. Abdelnour
Hanson Bridgett LLP
- 10 -

425 Market Street, 26th Floor
San Francisco, CA 94105
SAbdelnour@hansonbridgett.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 constitute a binding agreement between CEH and Settling Defendant 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. Except as provided in this Section 8.1, no obligation of either Party under this Consent Judgment shall become effective until the Effective Date as defined in Section 2.1.

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.

10. ATTORNEYS' FEES

10.1 A Party who unsuccessfully brings or contests an action arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs unless the unsuccessful Party has acted with substantial justification. For purposes of this Consent 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.*

10.2 Notwithstanding Section 10.1, a Party who prevails in a contested enforcement action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of Civil Procedure §1021.5 against a Party that acted with substantial justification. The Party seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and this

1 provision shall not be construed as altering any procedural or substantive requirements for
2 obtaining such an award.

3 10.3 Nothing in this Section 10 shall preclude a party from seeking an award of
4 sanctions pursuant to law.

5 **11. ENTIRE AGREEMENT**

6 11.1 This Consent Judgment contains the sole and entire agreement and understanding
7 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
8 negotiations, commitments or understandings related thereto, if any, are hereby merged herein
9 and therein. There are no warranties, representations or other agreements between the Parties
10 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
11 other than those specifically referred to in this Consent Judgment have been made by any Party
12 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
13 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
14 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
15 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
16 modification, waiver or termination of this Consent Judgment shall be binding unless executed in
17 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
18 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
19 whether or not similar, nor shall such waiver constitute a continuing waiver.

20 **12. RETENTION OF JURISDICTION**

21 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
22 Consent Judgment.

23 **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

24 13.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
25 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
26 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

27 **14. NO EFFECT ON OTHER SETTLEMENTS**

1 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
2 against an entity that is not Settling Defendant on terms that are different than those contained in
3 this Consent Judgment.

4 **15. EXECUTION IN COUNTERPARTS**

5 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by
6 means of facsimile or portable document format (pdf), which taken together shall be deemed to
7 constitute one document.

8
9 **IT IS SO ORDERED, ADJUDGED,**
10 **AND DECREED**

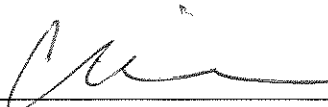
11
12 Dated: _____

Judge of the Superior Court

1 IT IS SO STIPULATED:

2
3 Dated: 31 JAN, 2017

CENTER FOR ENVIRONMENTAL HEALTH

4
5
6 
Signature

7
8 COLUMIZ PIZANO
Printed Name

9
10 ASSOCIATE DIRECTOR
Title

11
12
13 Dated: _____, 2017

MAYA KAIMAL FINE INDIAN FOODS, LLC

14
15
16 _____
Signature

17
18 _____
Printed Name

19
20 _____
Title

1 **IT IS SO STIPULATED:**

<p>2</p> <p>3 Dated: _____, 2017</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p>	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p>Signature _____</p> <p>Printed Name _____</p> <p>Title _____</p>
<p>12</p> <p>13 Dated: <u>1/30</u>, 2017</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p>	<p>MAYA KAIMAL FINE INDIAN FOODS, LLC</p> <p>Signature <u>Maya Kaimal</u></p> <p>Printed Name <u>Maya Kaimal</u></p> <p>Title <u>Founder</u></p>

EXHIBIT A
Settlement Payments and Allocations

Total Settlement Payment: \$50,000

Payment 1: Total \$25,000 - Due Five Days After the Effective Date

Payment 1 Allocations and Checks:

Allocation/Purpose	Check Payable To:	Deliver To:	Amount
OEHHA Portion of Civil Penalty	OEHHA	Per Section 4.2.1	\$2,527.50
CEH Portion of Civil Penalty	Center For Environmental Health	Lexington Law Group	\$842.50
Additional Settlement Payment	Center For Environmental Health	Lexington Law Group	\$2,527.50
CEH fee and cost reimbursement	Center For Environmental Health	Lexington Law Group	\$3,000.00
LLG fee and cost reimbursement	Lexington Law Group	Lexington Law Group	\$16,102.50

Payment 2: Total \$25,000 - Due Thirty Days After the Effective Date

Payment 2 Allocations and Checks:

Allocation/Purpose	Check Payable To:	Deliver To:	Amount
OEHHA Portion of Civil Penalty	OEHHA	Per Section 4.2.1	\$2,527.50
CEH Portion of Civil Penalty	Center For Environmental Health	Lexington Law Group	\$842.50
Additional Settlement Payment	Center For Environmental Health	Lexington Law Group	\$2,527.50
CEH fee and cost reimbursement	Center For Environmental Health	Lexington Law Group	\$3,000.00
LLG fee and cost reimbursement	Lexington Law Group	Lexington Law Group	\$16,102.50