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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,                                | ) | <b>[PROPOSED] CONSENT JUDGMENT</b> |
|   | ) | <b>AS TO DEEP FOODS INC. AND</b>   |
| v.  | ) | <b>CHETAK NEW YORK, L.L.C.</b>     |
|   | ) |                                    |
| ACH FOOD COMPANIES, INC., <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 Deep Foods Inc. (“Deep Foods”) and its distributor Chetak New York, L.L.C. (“Chetak”). Deep Foods and Chetak are referred to herein as “Settling Defendants.” CEH and Settling Defendants (the “Parties”) enter into this Consent Judgment to settle certain claims asserted by CEH against Settling Defendants 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 Defendants 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 Defendants, alleging that Settling Defendants 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 Deep Foods is a corporation or other business entity that manufactures, distributes,  
10 sells or offers for sale the Covered Products that are sold in the State of California. Chetak is a  
11 limited liability company or other business entity that manufactures, distributes, sells or offers for  
12 sale the Covered Products that are sold in the State of California.

13 1.4 On September 2, 2016, CEH filed the Complaint in the above-captioned matter,  
14 naming Settling Defendants as defendants in the action.

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

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

## **2. INJUNCTIVE RELIEF**

**2.1 Reformulation of Covered Products.** As of the date of approval of this Consent Judgment by the Court (the “Effective Date”), Settling Defendants shall not purchase, manufacture, ship, sell or offer for sale the Covered Products that will be sold or offered for sale in California that contain a concentration of more than thirty-one (31) parts per billion (“ppb”) Lead by weight (the “Reformulation Level”), such concentration to be determined by use of a test performed by an accredited laboratory using inductively coupled plasma mass spectrometry (ICP-MS) equipment with a level of detection of no greater than fifteen (15) ppm that meets standard laboratory QA/QC requirements.

## **3. ENFORCEMENT**

**3.1 General Enforcement Provisions.** CEH may, by motion or application for an order to show cause before this Court, enforce the terms and conditions contained in this Consent Judgment. Any action to enforce alleged violations of Section 2.1 by a Settling Defendant shall be 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 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.**

**3.2.2.1** 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 the Settling Defendant alleged to be violating the Consent Judgment, 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,

1 that CEH may have up to an additional sixty (60) days to send the Notice of Violation if,  
2 notwithstanding CEH's good faith efforts, the test data required by Section 3.2.2.2 below cannot  
3 be obtained by CEH from its laboratory before expiration of the initial sixty (60) day period.

4 3.2.2.2 The Notice of Violation shall, at a minimum, set forth: (a) the date  
5 the alleged violation was observed; (b) the location at which the Covered Products were offered  
6 for sale; (c) a description of the Covered Products giving rise to the alleged violation, including  
7 the name and address of the retail entity from which the sample was obtained and if available  
8 information that identifies the product lot; and (d) all test data obtained by CEH regarding the  
9 Covered Products and supporting documentation sufficient for validation of the test results,  
10 including any laboratory reports, quality assurance reports and quality control reports associated  
11 with testing of the Covered Products.

12 3.2.3 Notice of Election of Response. No more than thirty (30) days after  
13 effectuation of service of a Notice of Violation, the Settling Defendant shall provide written  
14 notice to CEH whether it elects to contest the allegations contained in a Notice of Violation  
15 ("Notice of Election"). Failure to provide a Notice of Election within thirty (30) days of  
16 effectuation of service of a Notice of Violation shall be deemed an election to contest the Notice  
17 of Violation.

18 3.2.3.1 If a Notice of Violation is contested, the Notice of Election shall  
19 include all then-available documentary evidence regarding the alleged violation, including all test  
20 data, if any is available. If the Settling Defendant or CEH later acquires additional test or other  
21 data regarding the alleged violation, it shall notify the other party and promptly provide all such  
22 data or information to the party.

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

8 3.2.5 Non-Contested Notices. If the Settling Defendant elects to not contest  
9 the allegations in a Notice of Violation, it shall undertake corrective action(s) and make  
10 payments, if any, as set forth below.

11 3.2.5.1 The Settling Defendant shall include in its Notice of Election a  
12 detailed description with supporting documentation of the corrective action(s) that it has  
13 undertaken or proposes to undertake to address the alleged violation. Any such correction shall,  
14 at a minimum, provide reasonable assurance that all Covered Products having the same lot  
15 number as that of the Covered Product identified in CEH's Notice of Violation (the "Noticed  
16 Covered Products") will not be thereafter sold or offered for sale to California consumers, that the  
17 Noticed Covered Products are removed from the California market and that the Settling  
18 Defendant has sent instructions to any of its stores and/or customers that offer the Noticed  
19 Covered Products for sale to cease offering the Noticed Covered Products for sale to California  
20 consumers and to either return all such Noticed Covered Products to the Settling Defendant for  
21 destruction, or to directly destroy such Noticed Covered Products. The Settling Defendant shall  
22 keep and make available to CEH for inspection and copying records of any correspondence  
23 regarding the market withdrawal and destruction of the Noticed Covered Products. If there is a  
24 dispute over the corrective action, the Settling Defendant and CEH shall meet and confer before  
25 seeking any remedy in court. In no case shall CEH issue more than one Notice of Violation per  
26 manufacturing lot of a type of Covered Product.

3.2.5.2 If the Notice of Violation is the first, second, third or fourth Notice of Violation received by the Settling Defendant under Section 3.2.1 that was not successfully contested or withdrawn, then the Settling Defendant shall pay \$10,000 for each Notice of Violation. If the Settling Defendant has received more than four (4) Notices of Violation under Section 3.2.1 that were not successfully contested or withdrawn, then the Settling Defendant shall pay \$20,000 for each Notice of Violation. For Non-Contested Notices, if the Settling Defendant produces with its Notice of Election test data for the Covered Product that: (i) was conducted in the year prior to the date CEH purchased the Covered Product that is the 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 the 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 the Settling Defendant for at least thirty (30) days to determine if the Settling Defendant and CEH can agree on measures that the Settling Defendant can undertake to prevent future violations.

## **4. PAYMENTS**

4.1 **Payments by Settling Defendants.** On or before ten (10) days after the entry of this Consent Judgment, Settling Defendants shall jointly and severally be liable for payment of

the total sum of \$50,000 as a settlement payment as further set forth in this Section.

**4.2 Allocation of Payments.** The total settlement amount shall be paid in five (5) separate checks in the amounts specified below and delivered as set forth below. Any failure by Settling Defendants to comply with the payment terms herein shall be subject to a stipulated late fee to be paid by Settling Defendants in the amount of \$100 for each day the full payment is not received after the applicable payment due date set forth in Section 4.1. 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 Defendants shall be allocated as set forth below between the following categories and made payable as follows:

**4.2.1** Settling Defendants shall pay \$6,740 as a civil penalty pursuant to Health & Safety Code §25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety Code §25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment for \$5,055 shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

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

The CEH portion of the civil penalty payment for \$1,685 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero

Street, San Francisco, CA 94117.

4.2.2 Settling Defendants shall pay \$5,055 as an Additional Settlement Payment (“ASP”) to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH intends to place these funds in CEH’s Toxics in Food Fund and use them to support CEH programs and activities that seek to educate the public about lead and other toxic chemicals in food, to work with the food industry and agriculture interests to reduce exposure to lead and other toxic chemicals in food, and to thereby reduce the public health impacts and risks of exposure to lead and other toxic chemicals in food sold in California. CEH shall obtain and maintain adequate records to document that ASPs are spent on these activities and CEH agrees to provide such documentation to the Attorney General within thirty days of any request from the Attorney General. The payments pursuant to this Section shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. These payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

4.2.3 Defendant shall pay \$38,205 as a reimbursement of a portion of CEH’s reasonable attorneys’ fees and costs. The attorneys’ fees and cost reimbursement shall be made in two separate checks as follows: (a) \$32,205 payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b) \$6,000 payable to the Center For Environmental Health and associated with taxpayer identification number 94-3251981. Both of these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

4.2.4 To summarize, Settling Defendants shall deliver checks made out to the payees and in the amounts set forth below:

| Payee                           | Amount  | Deliver To              |
|---------------------------------|---------|-------------------------|
| OEHHA                           | \$5,055 | OEHHA per Section 4.2.1 |
| Center For Environmental Health | \$1,685 | LLG                     |
| Center For Environmental Health | \$5,055 | LLG                     |



|   |                                 |          |     |
|---|---------------------------------|----------|-----|
| 1 | Lexington Law Group             | \$32,205 | LLG |
| 2 | Center For Environmental Health | \$6,000  | LLG |

## 3 4 **5. MODIFICATION AND DISPUTE RESOLUTION**

5        5.1 **Modification.** This Consent Judgment may be modified from time to time by  
6 express written agreement of the Parties, with the approval of the Court, or by an order of this  
7 Court upon motion and in accordance with law.

8        5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
9 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
10 modify the Consent Judgment.

## 11 **6. CLAIMS COVERED AND RELEASE**

12        6.1 Provided that both Settling Defendants comply in full with their obligations under  
13 Section 4 hereof, this Consent Judgment is a full, final and binding resolution between CEH on  
14 behalf of itself and the public interest and Settling Defendants and their parents, subsidiaries,  
15 affiliated entities that are under common ownership, directors, officers, employees, agents,  
16 shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to  
17 which Settling Defendants distribute or sell Covered Products, such as distributors, wholesalers,  
18 customers, retailers, franchisees, licensors and licensees (“Downstream Defendant Releasees”),  
19 of any violation of Proposition 65 based on failure to warn about alleged exposure to Lead  
20 contained in the Covered Products identified on Exhibit A that were sold, distributed or offered  
21 for sale by Settling Defendants prior to the Effective Date (the “Released Products”).

22        6.2 Provided that Settling Defendants comply in full with their obligations under  
23 Section 4 hereof, CEH, for itself, its agents, successors and assigns, releases, waives and forever  
24 discharges any and all claims against Settling Defendants, Defendant Releasees and Downstream  
25 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or  
26 common law claims that have been or could have been asserted by CEH individually or in the  
27 public interest regarding the failure to warn about exposure to Lead arising in connection with the  
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Released Products.

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

## **7. PROVISION OF NOTICE**

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

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:

Peg Carew Toledo  
Peg Carew Toledo, Law Corporation  
3001 Douglas Blvd., Suite 340  
Roseville, CA 95661  
peg@toledolawcorp.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.

1       **8.       COURT APPROVAL**

2           8.1       This Consent Judgment shall become enforceable upon the date signed by CEH  
3       and Settling Defendant, whichever is later, provided however, that CEH shall prepare and file a  
4       Motion for Approval of this Consent Judgment and Settling Defendants shall support approval of  
5       such Motion.

6           8.2       If this Consent Judgment is not entered by the Court, it shall be of no force or  
7       effect and shall not be introduced into evidence or otherwise used in any proceeding for any  
8       purpose.

9       **9.       GOVERNING LAW AND CONSTRUCTION**

10          9.1       The terms of this Consent Judgment shall be governed by the laws of the State of  
11       California.

12       **10.      ATTORNEYS' FEES**

13          10.1      A Party who unsuccessfully brings or contests an action arising out of this Consent  
14       Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs  
15       unless the unsuccessful Party has acted with substantial justification. For purposes of this  
16       Consent Judgment, the term substantial justification shall carry the same meaning as used in the  
17       Civil Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

18          10.2      Notwithstanding Section 10.1, a Party who prevails in a contested enforcement  
19       action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of  
20       Civil Procedure §1021.5 against a Party that acted with substantial justification. The Party  
21       seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and this  
22       provision shall not be construed as altering any procedural or substantive requirements for  
23       obtaining such an award.

24          10.3      Nothing in this Section 10 shall preclude a party from seeking an award of  
25       sanctions pursuant to law.

26       **11.      ENTIRE AGREEMENT**

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

## 14 **12. RETENTION OF JURISDICTION**

15 12.1 This Court shall retain jurisdiction of this matter to implement or modify the  
16 Consent Judgment.

## 17 **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

18 13.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
19 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
20 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

## 21 **14. NO EFFECT ON OTHER SETTLEMENTS**

22 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
23 against an entity that is not a Settling Defendant on terms that are different than those contained  
24 in this Consent Judgment.

1     **15.     EXECUTION IN COUNTERPARTS**

2             15.1     The stipulations to this Consent Judgment may be executed in counterparts and by  
3     means of facsimile or portable document format (pdf), which taken together shall be deemed to  
4     constitute one document.

5

6     **IT IS SO ORDERED, ADJUDGED,**  
7     **AND DECREED**

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9

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court

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1 IT IS SO STIPULATED:

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3 Dated: 24 APRIL, 2017

CENTER FOR ENVIRONMENTAL HEALTH



Signature

CONNIE PIZANO

Printed Name

ASSOCIATE DIRECTOR

Title

12  
13 Dated: \_\_\_\_\_, 2017

DEEP FOODS INC.

Signature

Printed Name

Title

1 **IT IS SO STIPULATED:**

2  
3 Dated: \_\_\_\_\_, 2017

**CENTER FOR ENVIRONMENTAL HEALTH**

4  
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6 \_\_\_\_\_  
Signature

7  
8 \_\_\_\_\_  
Printed Name

9  
10 \_\_\_\_\_  
Title

11  
12  
13 Dated: April 21, 2017

**DEEP FOODS INC.**

14  
15 \_\_\_\_\_  
Signature

16  
17 DEEPAK AMIN  
Printed Name

18  
19 PRES. DEPT  
Title

1 Dated: April 21, 2017

CHETAK NEW YORK, L.L.C.

Signature

Printed Name

Title



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**EXHIBIT A**

**Released Products**

| <b>Item #</b> | <b>Product Name</b>              |
|---------------|----------------------------------|
| P76           | Deep Foods Biryani               |
| P78           | Deep Foods Curry                 |
| P82           | Deep Foods Kashmiri              |
| P79           | Deep Foods Madras Curry          |
| P77           | Deep Foods Tandoori              |
| P81           | Deep Foods Vindaloo              |
| P24           | Deep Foods Ginger Paste          |
| P24L          | Deep Foods Ginger Paste          |
| P84           | Deep Foods Ginger & Garlic Paste |
| P84L          | Deep Foods Ginger & Garlic Paste |