

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “Agreement”) is between the Center for Environmental Health (“CEH”), on the one hand, and ITC, Limited (“ITC”), on the other hand (together, the “Parties”).

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and sufficient consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereto agree as follows:

### **1. INTRODUCTION**

1.1. This Agreement covers the lead content of “Covered Products,” a term defined to mean “Indian pastes and sauces containing ginger that are manufactured by ITC and sold, distributed or offered for sale in the State of California by other parties.”

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

1.3. ITC represents and warrants that Liberty Richter, LLC (“LR”) is the exclusive importer and distributor of the Kitchens of India brand food products in the United States.

1.4. On September 2, 2016, CEH filed the Complaint in *Center for Environmental Health v. ACH Food Companies, Inc.*, Case No. RG 16-829822 (Alameda County Superior Court) (the “Action”). On June 9, 2017, the Complaint was amended to name LR as a defendant in the Action. The Complaint does not name ITC as a defendant in the Action.

1.5. On or about June 30, 2017, CEH and LR entered into a proposed Consent Judgment in the Action to settle, compromise, and amicably resolve issues disputed in the Action as between CEH and LR (the “LR Consent Judgment”). The proposed Consent Judgment is attached hereto as Exhibit A.

1.6. In the proposed Consent Judgment, LR agrees to assume any and all liability related to CEH’s claims, regardless of its capacity as an importer and distributor of the Kitchens of India food

products, as if it were the manufacturer of the Kitchens of India food products and as such it stands in the shoes of the manufacturer of the Released Products for purposes of the proposed Consent Judgment.

1.7. The Parties have entered into and accept this Agreement for the purposes of settling, compromising and amicably resolving issues disputed in the Action, as between CEH and ITC, and to avoid the burdens, expenses, delay, and uncertainties of litigation.

1.8. Nothing in this Agreement constitutes, and nothing in this Agreement shall be construed to constitute an admission by the Parties of any fact, conclusion of law, issue of law, violation of law, fault, wrongdoing, liability, or responsibility. Nor shall compliance with the Agreement constitute or be construed to constitute an admission by the Parties of any fact, conclusion of law, issue of law, violation of law, fault, wrongdoing, liability, or responsibility. Nothing in this Agreement shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any other pending or future legal proceedings.

1.9. “Effective Date” means the date of entry of the proposed Consent Judgment by the Court in the Action.

1.10. Until the proposed Consent Judgment is entered by the Court, this Agreement shall be of no force or effect and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

## **2. INJUNCTIVE RELIEF**

2.1. **Sale of Covered Products.** After the Effective Date, ITC shall not ship, sell or offer for sale any Covered Products that will be sold or offered for sale to California consumers that do not meet the standards set forth in Section 2.2.

2.2. **Standards.** Covered Products that contain a concentration of no more than the amount of Lead by weight set forth in parts per billion (“ppb”) below are deemed compliant with the standards of this Section (the “Section 2.2 Standards”):

For Covered Products that are Indian pastes: 50 ppb

For Covered Products that are Indian sauces: 20 ppb

Examples of Covered Products sold by ITC in the past that are Indian pastes and Indian sauces are identified on Exhibit B, attached hereto. Compliance with the Section 2.2 Standards shall 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 50% of the Section 2.2 Standards that meets standard laboratory QA/QC requirements.

### **3. ENFORCEMENT OF SETTLEMENT AGREEMENT**

#### **3.1. General Enforcement Provisions.**

3.1.1. The Parties agree that any action based on a violation of this Agreement shall be brought in the Superior Court of California in Alameda County. For the purposes of enforcing this Agreement only, the Parties agree that the Superior Court of California in Alameda County has subject matter jurisdiction over any disputes arising from this Agreement and personal jurisdiction over each of the Parties, and that venue is proper in the County of Alameda. Any action to enforce alleged violations of Section 2.1 shall be brought exclusively pursuant to Section 3.2, and be subject to the meet and confer requirement of Section 3.2.5, if applicable.

3.1.2. Should a Party to this Agreement prevail on any action to enforce this Agreement, it shall be entitled to reasonable attorneys' fees and costs associated with such enforcement.

#### **3.2. Enforcement of Section 2.2 Standards.**

3.2.1. Covered Product Identification. Within 30 days after the Effective Date, ITC shall notify CEH of a means sufficient to allow CEH to identify Covered Products, if any, that have been supplied, or offered for sale, by ITC in California on or after the Effective Date. For example, ITC may provide a unique brand name or characteristic system of product numbering or labeling. Upon written request by CEH, but no more than once in any calendar year, ITC shall, within 30 days of receiving a request from CEH, update the information provided to CEH pursuant to this Section 3.2.1 by notifying CEH of a means sufficient to allow CEH to identify Covered Products currently supplied, or offered for sale, by ITC in California. If CEH is unable to determine whether a particular product is a Covered Product as to ITC based on the information provided to CEH pursuant to this Section, ITC shall cooperate in good faith with CEH in determining whether the product at issue is a Covered Product supplied, or offered for sale, by ITC that was later resold in California. Information provided to CEH pursuant to this Section 3.2.1, including but not limited to the identities of parties to contracts between ITC and third parties, may be designated by ITC as competitively sensitive confidential business

information, and if so designated shall not be disclosed to any person outside of CEH or its counsel without the written permission of ITC. Any motions or pleadings or any other court filings that may reveal information designated as competitively sensitive confidential business information pursuant to this Section shall be submitted in accordance with California Rules of Court 8.46 and 2.550, *et seq.* This provision shall sunset three years after the Effective Date.

3.2.2. Notice of Violation. In the event that CEH identifies a Covered Product that was manufactured or sold by ITC after the Effective Date and that was sold or offered for sale to California consumers, and for which CEH has laboratory test results showing that the Covered Product has a lead level exceeding the Section 2.2 Standards, CEH may issue a Notice of Violation to ITC pursuant to this Section in the Agreement.

3.2.3. Service of Notice of Violation and Supporting Documentation.

3.2.3.1. The Notice of Violation shall be sent to the person(s) identified in Section 10.1 to receive notices for ITC, and must be served within sixty (60) days of the later of the date the Covered Products at issue were purchased or otherwise acquired by CEH or the date that CEH can reasonably determine that the Covered Products at issue were manufactured, shipped, sold, or offered for sale by ITC, 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 3.2.3.2 below cannot be obtained by CEH from its laboratory before expiration of the initial sixty (60) day period.

3.2.3.2. 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.

3.2.4. Notice of Election of Response. No more than thirty (30) days after effectuation of service of a Notice of Violation, ITC shall provide written notice to CEH whether it

elects to contest the allegations contained in a Notice of Violation (“Notice of Election”). Failure to provide a Notice of Election within thirty (30) days of effectuation of service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.

3.2.4.1. If a Notice of Violation is contested, the Notice of Election shall include all then-available documentary evidence regarding the alleged violation, including all test data, if any is available. If ITC or CEH later acquires additional test or other data regarding the alleged violation, it shall notify the other Party and promptly provide all such data or information to the Party.

3.2.5. Meet and Confer. If a Notice of Violation is contested, CEH and ITC shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of serving a Notice of Election contesting a Notice of Violation, ITC may withdraw the original Notice of Election contesting the violation and serve a new Notice of Election to not contest the violation, provided, however, that in this circumstance ITC shall pay \$2,500 in addition to any payment required under this Agreement. At any time, CEH may withdraw a Notice of Violation, in which case for purposes of this Section 3.2 the result shall be as if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of Violation results within thirty (30) days of a Notice of Election to contest, CEH may file an enforcement action pursuant to Section 3.3. In any such proceeding, CEH may seek whatever fines, costs, penalties, attorneys’ fees, or other remedies are provided by law for failure to comply with the Agreement.

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

3.2.6.1. ITC shall include in its Notice of Election a detailed description with supporting documentation of the corrective action(s) that it has undertaken or proposes to undertake to address the alleged violation. Any such correction shall, at a minimum, provide reasonable assurance that all Covered Products having the same lot number as that of the Covered Product identified in CEH’s Notice of Violation (the “Noticed Covered Products”) will not be thereafter sold, or offered for sale, by ITC to California customers, and that ITC has sent instructions to any customers that offer the Noticed Covered Products for sale to cease offering the Noticed Covered Products for sale to California

consumers and to return all such Noticed Covered Products to ITC if the Noticed Covered Products are still offered for sale to California consumers.

3.2.6.2. ITC shall keep for a period of two years, and make available to CEH upon reasonable notice for inspection and copying, records of any correspondence regarding the foregoing. If there is a dispute over the corrective action, ITC and CEH shall meet and confer before seeking any remedy in court. In no case shall CEH issue more than one Notice of Violation per manufacturing lot of a type of Covered Product.

3.2.7. If the Notice of Violation is the first, second, third or fourth Notice of Violation received by ITC under Section 3.2.2 that was not successfully contested or withdrawn, then ITC shall pay \$10,000 for each Notice of Violation, provided, however, that in the first year after the Effective Date, CEH shall be entitled to collect payment on no more than two such Notices of Violation from ITC and Liberty Richter, collectively. If ITC has received more than four (4) Notices of Violation under Section 3.2.2 that were not successfully contested or withdrawn, then ITC shall pay \$20,000 for each Notice of Violation. If ITC produces with its Notice of Election test data for the Covered Product that: (i) was conducted prior to the date CEH gave Notice of Violation; (ii) was conducted on the same or same type of Covered Product; and (iii) demonstrates lead levels below the Section 2.2 Standards, then any payment under this Section shall be reduced by 100 percent (100%) for the first Notice of Violation, by seventy-five percent (75%) for the second Notice of Violation and by fifty percent (50%) for any subsequent Notice of Violation. In no case shall ITC be obligated to pay more than \$100,000 for uncontested Notices of Violation in any calendar year irrespective of the total number of Notices of Violation issued. Notwithstanding the foregoing, CEH shall only be entitled to receive payments for Notices of Violation related to alleged violations of this Agreement or LR Consent Judgment and in order to avoid any double recovery CEH shall not be entitled to receive in total from either or both ITC and LR any more than the amounts set forth in this Section.

3.2.8. 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 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, after December 31, 2017, ITC receives five (5) or more Notices of Violation concerning the same Covered Product that were not successfully contested or withdrawn in any two (2) year 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 Agreement. Prior to seeking such relief, CEH shall meet and confer with ITC for at least thirty (30) days to determine if ITC and CEH can agree on measures that ITC can undertake to prevent future violations.

#### **4. PAYMENTS**

4.1. **Joint and Several Liability.** ITC and LR shall be jointly and severally liable for payments of the amounts set forth in Section 4 of the Consent Judgment, provided however that in no event shall ITC and LR cumulatively pay more than the amount set forth for a particular payment in the Consent Judgment. If payments are not made by either LR or ITC in the amounts and on the dates specified in Section 4 of the Consent Judgment, LR and ITC shall be jointly and severally liable for any late fees, attorney's fees or interest recoverable under the Consent Judgment.

#### **5. MODIFICATION OF SETTLEMENT AGREEMENT**

5.1. This Agreement may be modified only by written agreement of the Parties.

#### **6. APPLICATION OF SETTLEMENT AGREEMENT**

6.1. This Agreement shall apply to and be binding upon the Parties hereto, their divisions, subdivisions, and subsidiaries, and the successors or assigns of any of them.

#### **7. CLAIMS COVERED AND RELEASE**

7.1. This Settlement Agreement is a full, final and binding resolution between CEH on behalf of itself and the public interest and ITC and its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, shareholders, successors, assigns, and attorneys ("ITC Releasees") of any violation of Proposition 65 based on failure to warn about alleged exposure to lead contained in Released Products that were sold, distributed or offered for sale by ITC prior to the Effective Date.

7.2. CEH, for itself, its agents, successors and assigns, releases, waives, and forever discharges any and all claims against ITC and ITC Releasees arising from any violation of Proposition 65 or any other statutory or common law claims that have been or could have been asserted by CEH individually or in the public interest regarding the failure to warn about exposure to lead arising in connection with Released Products manufactured, distributed or sold by ITC prior to the Effective Date.

7.3. Compliance with the terms of this Agreement by ITC constitutes compliance with Proposition 65 by ITC and ITC Releasees with respect to any alleged failure to warn about lead in Released Products manufactured, distributed or sold by ITC after the Effective Date.

## **8. SPECIFIC PERFORMANCE**

8.1. The Parties expressly recognize that ITC's obligations under this Agreement are unique. In the event that ITC is found to be in breach of this Agreement for failure to comply with the provisions of Section 2.1 hereto, the Parties agree that it would be extremely impracticable to measure any resulting damages and that such breach would cause irreparable damage. Accordingly, CEH, in addition to any other available rights or remedies, may sue in equity for specific performance, and ITC expressly waives the defense that a remedy in damages will be adequate.

## **9. GOVERNING LAW**

9.1. The terms of this Agreement shall be governed by the laws of the State of California.

## **10. PROVISION OF NOTICE**

10.1. All notices required pursuant to this Agreement and correspondence shall be sent by first class and electronic mail to the following:

For CEH:

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

For ITC:



Garrett L. Jansma  
Latham & Watkins LLP  
650 Town Center Drive, 20<sup>th</sup> Floor  
garrett.jansma@lw.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.

## **11. ENTIRE AGREEMENT**

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

## **12. NO EFFECT ON OTHER SETTLEMENTS**

12.1. Nothing in this Agreement shall preclude CEH from resolving any claim against any entity that is not ITC on terms that are different from those contained in this Agreement, except as provided in the release in Section 6.

## **13. EXECUTION IN COUNTERPARTS**

13.1. The stipulations to this Agreement may be executed in counterparts and by means of facsimile or portable document format (pdf), which taken together shall be deemed to constitute one document.

**14. AUTHORIZATION**

14.1. Each signatory to this Agreement certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Agreement and to enter into and execute the Agreement on behalf of the Party represented and legally bind that Party. The undersigned have read, understand, and agree to all of the terms and conditions of this Agreement. Except as explicitly provided herein, each Party is to bear its own fees and costs.

**AGREED TO:**

**CENTER FOR ENVIRONMENTAL HEALTH**



Charlie Pizarro  
Associate Director

Dated:

30 June 2017

**ITC LTD.**

Dated:

Name

Title

**14. AUTHORIZATION**

14.1. Each signatory to this Agreement certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Agreement and to enter into and execute the Agreement on behalf of the Party represented and legally bind that Party. The undersigned have read, understand, and agree to all of the terms and conditions of this Agreement. Except as explicitly provided herein, each Party is to bear its own fees and costs.

**AGREED TO:**

**CENTER FOR ENVIRONMENTAL HEALTH**

\_\_\_\_\_  
Charlie Pizarro  
Associate Director

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

**ITC LTD.**

α Hemant Malik

Dated: July 17, 2017

HEMANT MALIK  
\_\_\_\_\_  
Name

DIVISIONAL CHIEF EXECUTIVE- FOODS DIVISION.  
\_\_\_\_\_  
Title

# **Exhibit A**

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

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11 CENTER FOR ENVIRONMENTAL  
12 HEALTH,

13 Plaintiff,

14 v.

15 ACH FOOD COMPANIES, INC., *et al*,

16 Defendants.  
17  
18  
19

Case No. RG 16-829822

**[PROPOSED] CONSENT JUDGMENT  
AS TO LIBERTY RICHTER, LLC**

20 **1. INTRODUCTION**

21 1.1 The Parties to this Consent Judgment are the Center For Environmental Health  
22 (“CEH”), a California non-profit corporation, and Liberty Richter, LLC, a Delaware limited  
23 liability company (“Settling Defendant”).

24 1.2 Settling Defendant represents and warrants that it is the exclusive importer and  
25 distributor of the Kitchens of India brand food products in the United States. Settling Defendant  
26 agrees to assume any and all liability related to alleged violations of Proposition 65 (Health &  
27 Safety Code Section 25249.5 *et seq.*) regarding the failure to warn about exposures to lead and  
28 lead compounds (“Lead”) in the Kitchens of India brand food products, regardless of its capacity

1 as an importer and distributor of the Kitchens of India food products, as if it were the  
2 manufacturer of the Kitchens of India food products and as such it stands in the shoes of the  
3 manufacturer of Covered Products (defined below) for purposes of this Consent Judgment.

4 1.3 CEH and Settling Defendant (the “Parties”) enter into this Consent Judgment to  
5 settle certain claims asserted by CEH against Settling Defendant as set forth in the operative  
6 complaint (“Complaint”) in the above-captioned matter. This Consent Judgment covers the lead  
7 content of “Covered Products,” a term defined to mean “Indian pastes and sauces containing  
8 ginger that are distributed, sold, or offered for sale by Settling Defendant in the State of  
9 California.”

10 1.4 On June 14, 2016, CEH provided a 60-day Notice of Violation of Proposition 65  
11 to the California Attorney General, the District Attorneys of every county in California, the City  
12 Attorneys of every California city with a population greater than 750,000 and to Settling  
13 Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons to Lead  
14 contained in Covered Products without first providing a clear and reasonable Proposition 65  
15 warning.

16 1.5 Settling Defendant is a corporation or other business entity that distributes, sells,  
17 or offers for sale Covered Products that are sold in the State of California.

18 1.6 On September 2, 2016, CEH filed the Complaint in the above-captioned matter  
19 (the “Action”). On June 9, 2017, the pleading was amended to name Settling Defendant as a  
20 defendant in the Action.

21 1.7 For purposes of this Consent Judgment only, the Parties stipulate that this Court  
22 has jurisdiction over the allegations of violations contained in the Complaint and personal  
23 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper  
24 in the County of Alameda and that this Court has jurisdiction to enter and enforce this Consent  
25 Judgment as a full and final resolution of all claims which were or could have been raised in the  
26 Complaint based on the facts alleged therein with respect to Covered Products manufactured,  
27 distributed or sold by Settling Defendant.

1.8 The Parties have entered into and accept this Consent Judgment for the sole purposes of settling, compromising and amicably resolving issues disputed in this Action, and avoiding the burdens, expenses, delay, and uncertainties of litigation.

1.9 Nothing in this Consent Judgment constitutes, and nothing in this Consent Judgment shall be construed to constitute an admission by the Parties of any fact, conclusion of law, issue of law, violation of law, fault, wrongdoing, liability, or responsibility. Nor shall compliance with the Consent Judgment constitute or be construed to constitute an admission by the Parties of any fact, conclusion of law, issue of law, violation of law, fault, wrongdoing, liability, or responsibility. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any other pending or future legal proceedings.

## **2. INJUNCTIVE RELIEF**

2.1 **Purchase of Covered Products.** As of the date of entry of this Consent Judgment by the Court (the “Effective Date”), Settling Defendant shall not purchase any Covered Products that will be sold or offered for sale to California consumers that do not meet the standards set forth in Section 2.3.

2.2 **Sale of Covered Products.** Within sixty (60) days of the Effective Date, Settling Defendant shall not distribute, sell, or offer for sale, any Covered Products that will be sold or offered for sale to California consumers that do not meet the standards set forth in Section 2.3.

2.3 **Standards.** Covered Products that contain a concentration of no more than the amount of Lead by weight set forth in parts per billion (“ppb”) below are deemed compliant with the standards of this Section (the “Section 2.3 Standards”):

For Covered Products that are Indian pastes:	50 ppb
----------------------------------------------	--------

For Covered Products that are Indian sauces:	20 ppb
----------------------------------------------	--------

Examples of Covered Products sold by Settling Defendant in the past that are Indian pastes and Indian sauces are identified on Exhibit A attached hereto. Compliance with the Section 2.3 Standards shall 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 50% of the Section 2.3 Standards that meets standard laboratory QA/QC requirements.

### **3. ENFORCEMENT**

**3.1.1 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 by 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 Commitment to Comply with Section 2.3 Standards.**

**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 Section 2.3 Standards, 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 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.

**3.2.2.2** 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,



1 including any laboratory reports, quality assurance reports and quality control reports associated  
2 with testing of the Covered Products.

3           3.2.3 Notice of Election of Response. No more than thirty (30) days after  
4 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice  
5 to CEH whether it elects to contest the allegations contained in a Notice of Violation (“Notice of  
6 Election”). Failure to provide a Notice of Election within thirty (30) days of effectuation of  
7 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.

8           3.2.3.1 If a Notice of Violation is contested, the Notice of Election shall  
9 include all then-available documentary evidence regarding the alleged violation, including all  
10 test data, if any is available. If Settling Defendant or CEH later acquires additional test or other  
11 data regarding the alleged violation, it shall notify the other party and promptly provide all such  
12 data or information to the party.

13           3.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and Settling  
14 Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of  
15 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw  
16 the original Notice of Election contesting the violation and serve a new Notice of Election to not  
17 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay  
18 \$2,500 in addition to any payment required under this Consent Judgment. At any time, CEH  
19 may withdraw a Notice of Violation, in which case for purposes of this Section 3.2 the result  
20 shall be as if CEH never issued any such Notice of Violation. If no informal resolution of a  
21 Notice of Violation results within thirty (30) days of a Notice of Election to contest, CEH may  
22 file an enforcement motion or application pursuant to Section 3.1. In any such proceeding, CEH  
23 may seek whatever fines, costs, penalties, attorneys’ fees or other remedies are provided by law  
24 for failure to comply with the Consent Judgment.

25           3.2.5 Non-Contested Notices. If Settling Defendant elects to not contest the  
26 allegations in a Notice of Violation, it shall undertake corrective action(s) and make payments, if  
27 any, as set forth below.

1                   3.2.5.1 Settling Defendant shall include in its Notice of Election a detailed  
2 description with supporting documentation of the corrective action(s) that it has undertaken or  
3 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,  
4 provide reasonable assurance that all Covered Products having the same lot number as that of the  
5 Covered Product identified in CEH's Notice of Violation (the "Noticed Covered Products") will  
6 not be thereafter sold or offered for sale to California consumers, that the Noticed Covered  
7 Products are removed from the California market and that Settling Defendant has sent  
8 instructions to any of its stores and/or customers that offer the Noticed Covered Products for sale  
9 to cease offering the Noticed Covered Products for sale to California consumers and to either  
10 return all such Noticed Covered Products to Settling Defendant for destruction, or to directly  
11 destroy such Noticed Covered Products. Settling Defendant shall keep for a period of two years  
12 and make available to CEH, upon reasonable notice, for inspection and copying records any  
13 correspondence regarding the market withdrawal and destruction of the Noticed Covered  
14 Products. If there is a dispute over the corrective action, Settling Defendant and CEH shall meet  
15 and confer before seeking any remedy in court. In no case shall CEH issue more than one Notice  
16 of Violation per manufacturing lot of a type of Covered Product.

17                   3.2.5.2 If the Notice of Violation is the first, second, third or fourth Notice of  
18 Violation received by Settling Defendant under Section 3.2.1 that was not successfully contested  
19 or withdrawn, then Settling Defendant shall pay \$10,000 for each Notice of Violation, provided  
20 however that Settling Defendant shall be responsible for no more than two such payments for  
21 Notices of Violation served in the first year after the Effective Date. If Settling Defendant has  
22 received more than four (4) Notices of Violation under Section 3.2.1 that were not successfully  
23 contested or withdrawn, then Settling Defendant shall pay \$20,000 for each Notice of Violation.  
24 If Settling Defendant produces with its Notice of Election test data for the Covered Product that:  
25 (i) was conducted in the year prior to the date CEH purchased the Covered Product that is the  
26 subject of the Notice of Violation; (ii) was conducted on the Covered Product that was the  
27 subject of the Notice of Violation; and (iii) demonstrates Lead levels below the Section 2.3  
28 Standards, then any payment under this Section shall be reduced by fifty percent (50%).

1                   3.2.6 Payments. Any payments under Section 3.2 shall be made by check  
2 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a  
3 Notice of Election triggering a payment and which shall be used as reimbursement for costs for  
4 investigating, preparing, sending and prosecuting Notices of Violation, and to reimburse  
5 attorneys’ fees and costs incurred in connection with these activities.

6                   3.3     **Repeat Violations.** If Settling Defendant has received five (5) or more Notices of  
7 Violation concerning the same Covered Product that were not successfully contested or  
8 withdrawn in any twelve (12) month period then, at CEH’s option, CEH may seek whatever  
9 fines, costs, penalties, attorneys’ fees or other remedies that are provided by law for failure to  
10 comply with the Consent Judgment. Prior to seeking such relief, CEH shall meet and confer  
11 with Settling Defendant for at least thirty (30) days to determine if Settling Defendant and CEH  
12 can agree on measures that Settling Defendant can undertake to prevent future violations.

13     **4.     PAYMENTS**

14                   4.1     **Payments by Settling Defendant.** On or before five (5) days after the entry of  
15 this Consent Judgment, Settling Defendant shall pay the total sum of \$97,500 as a settlement  
16 payment as further set forth in this Section.

17                   4.2     **Allocation of Payments.** The total settlement amount for Settling Defendant  
18 shall be paid in five (5) separate checks in the amounts specified below and delivered as set forth  
19 below. Any failure by Settling Defendant to comply with the payment terms herein shall be  
20 subject to a stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each  
21 day the full payment is not received after the applicable payment due date set forth in Section  
22 4.1. The late fees required under this Section shall be recoverable, together with reasonable  
23 attorneys’ fees, in an enforcement proceeding brought pursuant to Section 3 of this Consent  
24 Judgment. The funds paid by Settling Defendant shall be allocated as set forth below between  
25 the following categories and made payable as follows:

26                   4.2.1   Settling Defendant shall pay \$13,115 as a civil penalty pursuant to Health  
27 & Safety Code §25249.7(b). The civil penalty payment shall be apportioned in accordance with  
28 Health & Safety Code §25249.12 (25% to CEH and 75% to the State of California’s Office of

1 Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of  
2 the civil penalty payment for \$9,837 shall be made payable to OEHHA and associated with  
3 taxpayer identification number 68-0284486. This payment shall be delivered as follows:

4 For United States Postal Service Delivery:

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

10 For Non-United States Postal Service Delivery:

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

16 The CEH portion of the civil penalty payment for \$3,279 shall be made payable to  
17 the Center for Environmental Health and associated with taxpayer identification number 94-  
18 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San  
19 Francisco, CA 94117.

20 4.2.2 Settling Defendant shall pay \$9,836 as an Additional Settlement Payment  
21 (“ASP”) to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of  
22 Regulations, Title 11, § 3204. CEH intends to place these funds in CEH’s Toxics in Food Fund  
23 and use them to support CEH programs and activities that seek to educate the public about lead  
24 and other toxic chemicals in food, to work with the food industry and agriculture interests to  
25 reduce exposure to lead and other toxic chemicals in food, and to thereby reduce the public  
26 health impacts and risks of exposure to lead and other toxic chemicals in food sold in California.  
27 CEH shall obtain and maintain adequate records to document that ASPs are spent on these  
28 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 Settling Defendant shall pay \$74,548 as a reimbursement of a portion of CEH's reasonable attorneys' fees and costs. This amount shall be divided into two checks: (1) a check in the amount of \$65,648 shall be made payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175; and (2) a check in the amount of \$8,900 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. These payments shall be delivered to the Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

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

Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$9,837	OEHHA per Section 4.2.1
Center For Environmental Health	Penalty	\$3,279	LLG
Center For Environmental Health	ASP	\$9,836	LLG
Lexington Law Group	Fee and Cost	\$65,648	LLG
Center For Environmental Health	Fee and Cost	\$8,900	LLG

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

5.1 **Modification.** This Consent Judgment, including without limitation the Section 2.3 Standards, may be modified from time to time by express written agreement of the Parties, with the approval of the Court, or by an order of this Court upon motion and in accordance with law.

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

1     **6.     CLAIMS COVERED AND RELEASE**

2             6.1     Provided that Settling Defendant complies in full with its obligations under  
3     Section 4 hereof, this Consent Judgment is a full, final and binding resolution between CEH on  
4     behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries,  
5     affiliated entities that are under common ownership, directors, officers, employees, agents,  
6     shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to  
7     which Settling Defendant distributes or sells Covered Products, such as distributors, wholesalers,  
8     customers, retailers, franchisees, licensors and licensees (“Downstream Defendant Releasees”),  
9     of any violation of Proposition 65 based on failure to warn about alleged exposure to Lead  
10    contained in the Covered Products identified on Exhibit A that were sold, distributed or offered  
11    for sale by Settling Defendant within 60 days of the Effective Date (the “Released Products”).

12            6.2     Provided that Settling Defendant complies in full with its obligations under  
13    Section 4 hereof, CEH, for itself, its agents, successors and assigns, releases, waives and forever  
14    discharges any and all claims against Settling Defendant, Defendant Releasees and Downstream  
15    Defendant Releasees arising from any violation of Proposition 65 or any other statutory or  
16    common law claims that have been or could have been asserted by CEH individually or in the  
17    public interest regarding the failure to warn about exposure to Lead arising in connection with  
18    the Released Products.

19            6.3     Provided that Settling Defendant complies in full with its obligations under  
20    Section 4 hereof, compliance with the terms of this Consent Judgment by Settling Defendant and  
21    Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant,  
22    Defendant Releasees and Downstream Defendant Releasees with respect to any alleged failure to  
23    warn about Lead in Covered Products manufactured, distributed or sold by Settling Defendant  
24    after the Effective Date.

25     **7.     PROVISION OF NOTICE**

26            7.1     When CEH is entitled to receive any notice under this Consent Judgment, the  
27    notice shall be sent by first class and electronic mail to:  
28

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:

Garrett L. Jansma  
Latham & Watkins LLP  
650 Town Center Drive, 20th Floor  
Costa Mesa, CA 92626-1925  
garrett.jansma@lw.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 upon the date it is entered by the Court, provided however that the provisions of Section 8.2 below shall become enforceable upon the date this Consent Judgment is signed by CEH and Settling Defendant, whichever is later.

8.2 CEH shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall support CEH's Motion for Approval.

8.3 Other than as set forth in this Section, 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

1 Consent Judgment, the term substantial justification shall carry the same meaning as used in the  
2 Civil Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

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

9 10.3 Nothing in this Section 10 shall preclude a party from seeking an award of  
10 sanctions pursuant to law.

## 11 **11. ENTIRE AGREEMENT**

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

## 26 **12. RETENTION OF JURISDICTION**

27 12.1 This Court shall retain jurisdiction of this matter to implement or modify the  
28 Consent Judgment.



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

13.1 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 Consent Judgment on behalf of the Party represented and legally to bind that Party.

**14. NO EFFECT ON OTHER SETTLEMENTS**

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

**15. EXECUTION IN COUNTERPARTS**

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


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

Dated: \_\_\_\_\_  
Judge of the Superior Court

IT IS SO STIPULATED:

Dated: 30 June, 2017

**CENTER FOR ENVIRONMENTAL HEALTH**

  
Signature

Corinne Pizano  
Printed Name

Associate Director  
Title

Dated: \_\_\_\_\_, 2017

**LIBERTY RICHTER, LLC**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

1 **IT IS SO STIPULATED:**

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

**CENTER FOR ENVIRONMENTAL HEALTH**

Signature

Printed Name

Title

12 Dated: June 30, 2017

**LIBERTY RICHTER, LLC**

Signature

Printed Name

Title

**EXHIBIT A**

**Released Products**

Kitchens of India Bombay Kadai  
Kitchens of India Delhi Dum Aloo  
Kitchens of India Delhi Murgh Makhani  
Kitchens of India Hyderabad Korma  
Kitchens of India Kashmiri Rogan Josh  
Kitchens of India Malai Tikka  
Kitchens of India Paste for Butter Chicken Curry  
Kitchens of India Paste for Chicken Curry  
Kitchens of India Paste for Fish Curry  
Kitchens of India Paste for Hyderabad Biryani  
Kitchens of India Paste for Lamb Curry  
Kitchens of India Paste for Malabari Chicken Stew  
Kitchens of India Paste for Tikka Masala  
Kitchens of India Paste for Vegetable Curry  
Kitchens of India Punjabi Tikka Masala  
Kitchens of India Tandoori Tikka  
Kitchens of India Paste for Vegetable Biryani

# **Exhibit B**

## EXHIBIT B

### Released Products

#	Release Product Name	Shelf Life (months)
1	Kitchens of India Bombay Kadai	24
2	Kitchens of India Delhi Dum Aloo	24
3	Kitchens of India Delhi Murgh Makhani	24
4	Kitchens of India Hyderabad Korma	24
5	Kitchens of India Kashmiri Rogan Josh	24
6	Kitchens of India Malai Tikka	24
7	Kitchens of India Paste for Butter Chicken Curry	30
8	Kitchens of India Paste for Chicken Curry	30
9	Kitchens of India Paste for Fish Curry	30
10	Kitchens of India Paste for Hyderabad Biryani	30
11	Kitchens of India Paste for Lamb Curry	30
12	Kitchens of India Paste for Malabari Chicken Stew	30
13	Kitchens of India Paste for Tikka Masala	30
14	Kitchens of India Paste for Vegetable Curry	30
15	Kitchens of India Punjabi Tikka Masala	24
16	Kitchens of India Tandoori Tikka	24
17	Kitchens of India Paste for Vegetable Biryani	30

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