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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

COMMUNITY SCIENCE INSTITUTE,  
Plaintiff,  
v.  
PLUM, INC. dba PLUM ORGANICS and  
PLUM, PBC,  
Defendants.

Case No.:  
**STIPULATED CONSENT JUDGMENT**

**1. DEFINITIONS**

1.1. The “Complaint” means the operative complaint in the above-captioned matter.

1.2. “Covered Products” means the following products: (i) 2 Grow Well Tummy Prune, Pear, Peach & Pumpkin with Chia; (ii) Mighty Dinos - Cheddar Organic Baked Crackers; (iii) Mighty Sticks Berry Beet Whole Grain Snacks; (iv) Mighty Snack Bars – Strawberry; (v) Mighty Sticks Apple Carrot Whole Grain Snacks; (vi) Mighty Snack Bars – Blueberry; and (vii) Little Yums - Pumpkin & Banana Organic Teething Wafers.

1.3. The “Effective Date” of this Stipulated Consent Judgment (“Consent Judgment”) is the date the Court approves and enters this Consent Judgment.

1.4. The “Compliance Date” is the date that is four (4) months after the Effective Date.

1 **2. INTRODUCTION**

2 2.1. The Parties to this Consent Judgment are Plaintiff Community Science Institute  
3 (“CSI”) and Defendants Plum, Inc., dba Plum Organics and Plum PBC (collectively, “Plum”). CSI  
4 and Plum (collectively, the “Parties” and individually, a “Party”) enter into this Consent Judgment  
5 to settle certain claims asserted by CSI against Plum as set forth in the Complaint.

6 2.2. CSI is an unincorporated association whose mission is to unite consumers and  
7 industrial neighbors to reform government and industry practices for a toxic free future.

8 2.3. Plum manufactures, distributes, and/or sells the Covered Products.

9 2.4. On May 16, 2018, CSI served a 60-day Notice of Violation of Proposition 65 on the  
10 California Attorney General, the District Attorneys of every county in California, the City Attorneys  
11 of every California city with a population greater than 750,000, and to Plum, alleging that Plum  
12 violated Proposition 65 by exposing persons in California to acrylamide contained in Covered  
13 Products without first providing a clear and reasonable Proposition 65 warning (the “Notice”). A  
14 true and correct copy of the Notice is attached hereto as Exhibit A.

15 2.5. Based on information exchanged between the Parties, CSI agrees not to dispute that  
16 the following Covered Products comply with Proposition 65: Mighty Snack Bars – Strawberry,  
17 Mighty Snack Bars – Blueberry, and Little Yums - Pumpkin & Banana Organic Teething Wafers.

18 2.6. More than 60 days have passed since the Notice was served on the Attorney General,  
19 public enforcers, and Plum and no designated governmental entity has filed a complaint against  
20 Plum with regard to the Covered Products or the alleged violations.

21 2.7. For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
22 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
23 over Plum as to the acts alleged in the Complaint, that venue is proper in the County of Alameda,  
24 and that this Court has jurisdiction to enter and enforce this Consent Judgment as a full and final  
25 resolution of all claims which were or could have been raised in the Complaint based on the facts  
26 alleged therein and in the Notices with respect to Covered Products manufactured, distributed,  
27 and/or sold by or on behalf of Plum.

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1           2.8. Plum denies the allegations in the Notice and Complaint, and nothing in this Consent  
2 Judgment is or shall be construed as an admission by the Parties of any fact, conclusion of law,  
3 issue of law, or violation of law, nor shall compliance with the Consent Judgment constitute or be  
4 construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of  
5 law. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy,  
6 argument, or defense the Parties may have in any other pending or future legal proceedings. This  
7 Consent Judgment is the product of negotiation and compromise and is accepted by the Parties  
8 solely for purposes of settling, compromising, and resolving issues disputed in this action.

9           **3. PLUM’S DUTIES**

10           3.1. Beginning on the Compliance Date, Plum shall not manufacture, or purchase from  
11 another manufacturer, for “Distribution in California” the following products: 2 Grow Well  
12 Tummy Prune, Pear, Peach & Pumpkin with Chia, Mighty Dinos – Cheddar Organic Baked  
13 Crackers, Mighty Sticks Berry Beet Whole Grain Snacks, and Mighty Sticks Apple Carrot Whole  
14 Grain Snacks (the “Discontinued Products”).

15           3.2. As used in this Consent Judgment, the term “Distribution in California” shall mean  
16 to directly ship a Discontinued Product into California for sale in California or to sell a  
17 Discontinued Product to a distributor that Plum knows or has reason to know will sell the  
18 Discontinued Product in California.

19           **4. SETTLEMENT PAYMENT**

20           4.1. **Total Settlement Amount.** In full satisfaction of all potential civil penalties,  
21 additional settlement payments, attorney’s fees and costs (including, but not limited to, fees and  
22 costs incurred by attorneys, experts, and investigators), Plum shall make a total payment of  
23 \$125,000 (“Total Settlement Amount”) to CSI within fifteen (15) calendar days of the Effective  
24 Date (“Due Date”). Plum shall make this payment by a check made payable to Lozeau Drury LLP  
25 and delivered to Lozeau Drury LLP, 410 12th Street, Suite 250, Oakland, California 94607.  
26 The Total Settlement Amount shall be apportioned as follows:

27           4.2. **Allocation of Payments.** The Total Settlement Amount shall be allocated as  
28 follows:

1                   4.2.1. **Civil Penalty.** \$48,715.05 shall be considered a civil penalty pursuant to  
2 California Health and Safety Code section 25249.7(b)(1). CSI shall remit 75% (\$36,749.95) of the  
3 civil penalty to the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in  
4 the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and  
5 Safety Code section 25249.12(c). CSI will retain the remaining 25% (\$11,965.10) of the civil  
6 penalty.

7                   4.2.2. **Additional Settlement Payment.** \$36,749.95 shall be considered an  
8 Additional Settlement Payment (“ASP”) pursuant to Health & Safety Code § 25249.7(b), and  
9 California Code of Regulations, Title 11, § 3204. These funds shall be distributed as follows:

10                   4.2.2.1. **Clean Label Project.** \$27,006.94 of the ASP funds shall be  
11 distributed to the Clean Label Project (“CLP”), a nonprofit focused on health and transparency in  
12 consumer product labeling. CLP will utilize the ASP for activities that address the same public  
13 harm as allegedly caused by Defendant in this matter. These activities are detailed below and  
14 support CLP’s overarching goal of health and transparency in consumer product labeling and its  
15 vision is to reduce contamination across all consumer products. CLP will restrict use of the ASP  
16 received from this Consent Judgment to the following purposes:

17                   4.2.2.2. ASP funds will be used by CLP for research and educational  
18 purposes associated with reducing or remediating exposures to acrylamide and other toxic  
19 chemicals contained in consumer products sold in California and/or to increase consumer awareness  
20 of the health hazards posed by acrylamide and other toxic chemicals in consumer products sold in  
21 California and how such hazards may be mitigated. Specifically, CLP will use the ASP funds to  
22 support its activities that educate the public about the potential harms of acrylamide and other toxic  
23 chemicals in food and ways to reduce those harms. As part of these educational efforts, CLP will  
24 create infographics that explain in an easy to understand manner the hazards of acrylamide and  
25 other toxic chemicals, and ways to reduce those hazards. In addition, CLP will also present this  
26 information through webinars for California residents. In addition, CLP will use the ASP funds to  
27 test additional products and create a California-specific webpage analyzing toxic chemical levels of  
28 products sold in California.

1                   4.2.2.3.       CLP's activities will have a direct and primary effect within  
2 the State of California because they funds will be used to educate California consumers about the  
3 harms of acrylamide and other toxic contaminants contained in foods, and ways to reduce those  
4 hazards. CLP's activities will also have a direct and primary effect within the State of California  
5 because CLP will create a web page that specifically analyzes Proposition 65 toxic contaminants in  
6 foods and other products that are sold in California.

7                   4.2.2.4.       CLP shall be fully accountable in that it will maintain  
8 adequate records to document and will be able to demonstrate how the ASP funds will be spent and  
9 can assure that the funds are being spent only for the proper, designated purposes described in this  
10 Consent Judgment. CLP shall provide the Attorney General, within thirty days of any request,  
11 copies of documentation demonstrating how such funds have been spent.

12                   4.2.2.5.       **Community Science Institute.** \$9,743.01 of the ASP funds  
13 shall be distributed to Plaintiff CSI. CSI will restrict use of the ASP received from this Consent  
14 Judgment to the following purposes:

15                   4.2.2.6.       CSI will use the funds to obtain, analyze, and test additional  
16 food products that may contain acrylamide and other toxic chemicals and are sold to California  
17 consumers, and investigate those companies that are manufacturing and selling those products that  
18 violate Proposition 65. CSI's use of the ASP funds will have a direct and primary effect within the  
19 State of California because California consumers will be benefitted by the reduction and/or  
20 elimination of exposure to acrylamide and/or other toxic chemicals in food products by providing  
21 clear and reasonable warnings to California consumers prior to ingestion of the products.

22                   4.2.2.7.       CSI shall be held fully accountable in that it will maintain  
23 adequate records to document and will be able to demonstrate how the ASP funds will be spent and  
24 can assure that the funds are being spent only for the proper, designated purposes described in this  
25 Consent Judgment. CSI shall provide the Attorney General, within thirty days of any request,  
26 copies of documentation demonstrating how such funds have been spent.

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1                   4.2.3. **Attorneys' Fees.** \$39,535.00 shall be distributed to Lozeau Drury LLP as  
2 reimbursement of CSI's attorney's fees and reasonable costs incurred in bringing this action.  
3 Except as explicitly provided herein, each Party shall bear its own fees and costs.

4 **5. ENFORCEMENT**

5                   5.1. In the event that Plum fails to remit the Total Settlement Amount owed under  
6 Section 4 of this Consent Judgment on or before the Due Date, Plum shall be deemed to be in  
7 material breach of its obligations under this Consent Judgment. CSI shall provide written notice of  
8 the delinquency to Plum via electronic mail. If Plum fails to deliver the Total Settlement Amount  
9 within five (5) days from the written notice, the Total Settlement Amount shall accrue interest at the  
10 statutory judgment interest rate provided in the California Code of Civil Procedure section 685.010.

11                   5.2. The Parties agree that any legal action to enforce this Consent Judgment shall be  
12 brought in Alameda County Superior Court. The Parties agree that Alameda County Superior Court  
13 has subject matter jurisdiction over the enforcement of this Consent Judgment and personal  
14 jurisdiction over Plum, and that venue is proper in Alameda County.

15                   5.3. If CSI purchases a Discontinued Product in California that has a best-by or sell-by  
16 (or equivalent) date or other code that reflects that the Discontinued Product was manufactured by  
17 or for Plum on or after the Compliance Date, or if the manufacture date is not apparent from the  
18 label, CSI shall inform Plum in a reasonably prompt manner, including information sufficient to  
19 permit Plum to identify the alleged violation of this Consent Judgment. Plum shall, within thirty  
20 (30) days following such notice, provide CSI with documentation that the Discontinued Products  
21 are in fact being discontinued in the State of California or other information to demonstrate that  
22 Plum is in compliance with the terms of this Consent Judgment. The Parties shall first attempt to  
23 resolve the matter prior to CSI taking any further legal action.

24                   5.4. Any Party that fails to meet and confer or otherwise attempt in good faith to resolve  
25 any dispute arising under this Consent Judgment prior to seeking judicial enforcement, shall forfeit  
26 any attorney's fees and cost to which that Party may otherwise be entitled.

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1 **6. APPLICATION**

2 6.1 This Consent Judgment may apply to, be binding upon, and benefit the Parties and  
3 their respective officers, directors, attorneys, shareholders, employees, agents, parent companies,  
4 subsidiaries, divisions, franchisees, licensees, customers (excluding private labelers), distributors,  
5 wholesalers, retailers, predecessors, successors, and assigns. This Agreement shall have no  
6 application to any Covered Product which is distributed or sold outside the State of California.

7 **7. BINDING EFFECT; CLAIMS COVERED AND RELEASED**

8 7.1. This Consent Judgment is a full, final, and binding resolution between CSI, on behalf  
9 of itself and in the public interest, and Plum and its officers, directors, shareholders, employees,  
10 agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers,  
11 manufacturers, distributors, wholesalers, retailers, and all other upstream and downstream entities in  
12 the distribution chain of any Covered Product, and the predecessors, successors, and assigns of any  
13 of them (collectively, "Released Parties"). CSI, on behalf of itself and in the public interest, hereby  
14 fully releases and discharges the Released Parties from any and all claims, actions, causes of action,  
15 suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have  
16 been asserted from the handling, use, or consumption of the Covered Products, as to any alleged  
17 violation of Proposition 65 or its implementing regulations arising from the failure to provide  
18 Proposition 65 warnings on the Covered Products regarding acrylamide for Discontinued Products  
19 manufactured, distributed, or sold prior to the Compliance Date.

20 7.2. CSI, on behalf of itself, hereby fully releases and discharges the Released Parties  
21 from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties,  
22 fees, costs, and expenses asserted, or that could have been asserted from the handling, use, or  
23 consumption of the Covered Products, as to any alleged violation of Proposition 65 or its  
24 implementing regulations arising from the failure to provide Proposition 65 warnings on the  
25 Covered Products regarding acrylamide for Covered Products manufactured, distributed, or sold  
26 prior to the Compliance Date.

27 7.3. CSI and Plum each waive and release any and all claims they may have against each  
28 other for all actions or statements made or undertaken in the course of seeking or opposing

1 enforcement of Proposition 65 in connection with the claims in the Notice and Complaint with  
2 respect to Covered Products manufactured, distributed, or sold prior to the Compliance Date,  
3 provided, however, that nothing in Section 7 shall affect or limit any Party's right to seek to enforce  
4 the terms of this Consent Judgment.

5 7.4. It is possible that other claims not known to the Parties, arising out of the facts  
6 alleged in the Notice or Complaint, and relating to the Covered Products, will develop or be  
7 discovered. CSI on behalf of itself only, and Plum, on behalf of itself only, acknowledge that this  
8 Consent Judgment is expressly intended to cover and include all such claims up through and  
9 including the Effective Date, including all rights of action therefore. CSI and Plum acknowledge  
10 that the claims released in Sections 7.2 and 7.3 above may include unknown claims, and  
11 nevertheless waive California Civil Code section 1542 as to any such unknown claims. California  
12 Civil Code section 1542 reads as follows:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
14 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
15 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN  
16 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER  
17 SETTLEMENT WITH THE DEBTOR.

18 CSI on behalf of itself only, and Plum on behalf of itself only, acknowledge and understand the  
19 significance and consequences of this specific waiver of California Civil Code section 1542.

20 7.5. Compliance with the terms of this Consent Judgment shall be deemed to constitute  
21 compliance with Proposition 65 by any Released Party regarding alleged exposures to acrylamide in  
22 the Covered Products manufactured, distributed, or sold on or after the Compliance Date. Nothing  
23 in this Consent Judgment is intended to apply to any occupational or environmental exposures  
24 arising under Proposition 65, nor shall it apply to any of Plum's products other than the Covered  
25 Products.

## 26 **8. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

27 8.1 In the event that any of the provisions of this Agreement are held by a court to be  
28 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.



1 **9. GOVERNING LAW**

2 9.1 The terms and conditions of this Consent Judgment shall be governed by and  
3 construed in accordance with the laws of the State of California.

4 **10. MODIFICATION**

5 10.1. This Consent Judgment after its entry by the Court may be modified upon written  
6 agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon.

7 10.2. Plum may request that CSI agree to modify this Consent Judgment to substitute an  
8 acrylamide concentration standard that CSI agrees to in a future consent judgment or settlement  
9 agreement applicable to products manufactured by other companies that are similar to the  
10 Discontinued Products. If a dispute should arise concerning the applicability of this provision, then  
11 the Parties shall meet and confer in good faith to attempt to resolve the dispute, but if it cannot be  
12 resolved in that manner, either Party may present the dispute to the Alameda County Superior Court  
13 for resolution.

14 10.3. If a final decision of a court determines that warnings for acrylamide exposures or  
15 that enforcement of Proposition 65 claims for acrylamide exposures are preempted or otherwise  
16 unlawful or unconstitutional with respect to products similar to the Discontinued Products, then  
17 Plum may request that CSI agree to modify this Consent Judgment to conform to such ruling in  
18 order to avoid unfair, inconsistent, or anti-competitive results. If a dispute should arise concerning  
19 the applicability of this provision, then the Parties shall meet and confer in good faith to attempt to  
20 resolve the dispute, but if it cannot be resolved in that manner, either Party may present the dispute  
21 to the Alameda County Superior Court for resolution.

22 10.4. If there is any other change in law for which Plum believes a modification to this  
23 Consent Judgment is appropriate, then Plum may request that CSI agree to modify this Consent  
24 Judgment accordingly. If a dispute should arise concerning the applicability of this provision, then  
25 the Parties shall meet and confer in good faith to attempt to resolve the dispute, but if it cannot be  
26 resolved in that manner, either Party may present the dispute to the Alameda County Superior Court  
27 for resolution.

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1           10.5. In any stipulated modification to the Consent Judgment, the Party requesting the  
2 modification shall prepare the draft motion or application to modify the Consent Judgment.

3 **11. PROVISION OF NOTICE**

4           11.1. All notices required to be given to either Party to this Consent Judgment by the other  
5 shall be in writing and sent to the following agents listed below via email and first-class mail.

6 **For Community Science Institute:**

7 Rebecca L. Davis  
8 LOZEAU | DRURY LLP  
9 410 12th Street, Suite 250  
10 Oakland, CA 94607  
11 Ph: 510-836-4200  
12 Fax: 510-836-4205  
13 Email: rebecca@lozeaudrury.com

14 **For Plum:**

15 Sarah Esmaili  
16 ARNOLD & PORTER  
17 Three Embarcadero Center, 10th Floor  
18 San Francisco, CA 94111  
19 Telephone: (415) 471-3283  
20 Facsimile: (415) 471-3400  
21 Email: sarah.esmaili@arnoldporter.com

22 **12. EXECUTION AND COUNTERPARTS**

23           12.1. This Consent Judgment may be executed in counterparts, which taken together shall  
24 be deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as  
25 valid as the original signature.

26 **13. DRAFTING**

27           13.1. The terms of this Consent Judgment have been reviewed by the respective counsel  
28 for each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms  
and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and  
construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,  
and no provision of this Consent Judgment shall be construed against any Party, based on the fact  
that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any

1 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
2 equally in the preparation and drafting of this Consent Judgment.

3 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

4 14.1. If a dispute arises with respect to either Party's compliance with the terms of this  
5 Consent Judgment, the Parties shall meet and confer in person, by telephone, and/or in writing and  
6 endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in the  
7 absence of such a good faith attempt to resolve the dispute beforehand.

8 **15. ENTIRE AGREEMENT, AUTHORIZATION**

9 15.1. This Consent Judgment contains the sole and entire agreement and understanding of  
10 the Parties with respect to the entire subject matter herein, and any and all prior discussions,  
11 negotiations, commitments, and understandings related hereto. No representations, oral or  
12 otherwise, express or implied, other than those contained herein have been made by any Party. No  
13 other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist  
14 or to bind any Party.

15 15.2. Each signatory to this Consent Judgment certifies that he or she is fully authorized  
16 by the Party he or she represents to stipulate to this Consent Judgment.

17 **16. COURT APPROVAL**

18 16.1. If this Consent Judgment is not entered by the Court, it shall be of no force or effect.  
19 In that event, CSI and Plum agree that this Consent Judgment and any related negotiations are not  
20 relevant to any Party's claims or defenses and may not be used as evidence in any action.

21 **17. RETENTION OF JURISDICTION**

22 17.1. This Court shall retain jurisdiction of this matter to implement or modify the Consent  
23 Judgment.

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

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

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Dated: January 24, 2019

**PLUM, INC. dba PLUM ORGANICS and  
PLUM, PBC**

  
Signature

MARK TUMELTY  
Printed Name

VICE PRESIDENT - MARKETING  
Title

Dated: Feb. 1, 2019

**COMMUNITY SCIENCE INSTITUTE**

  
Signature

Denny Larson  
Printed Name

Executive Director  
Title