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4 Attorneys for Plaintiff
5 RAMY KAUFLEDER EDEN

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

RAMY KAUFLEDER EDEN

Plaintiff,

v.

HATHI BRAND FOODS INC; SD
PIONEER FOOD INC.; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 37-2023-00031915-CU-MC-CTL

**[PROPOSED] STIPULATED CONSENT
JUDGMENT**

1 Plaintiff Ramy Eden (“Plaintiff” or “Eden”), Defendant Hathi Brand Foods Inc. (“Hathi”), and
2 Defendant SD Pioneer Food Inc. (“Pioneer” and, together with Hathi, “Defendants”) hereby enter into
3 this Stipulated Consent Judgment (“Consent Judgment”) as follows:

4 WHEREAS: On April 11, 2023, Plaintiff served a 60-Day Notice of Violation upon the
5 California Attorney General, the district attorney for each county in the State of California, the city
6 attorney for each city in the State of California with a population greater than 750,000 persons
7 (collectively, “Public Prosecutors”), and Defendants alleging that Defendants violated California’s
8 Safe Drinking Water and Toxic Enforcement Act of 1986 codified at Cal. Health & Safety Code §
9 25249.5, *et seq.* (“Proposition 65”) with regard to the product Captain Cook Tamarind (“Covered
10 Product”);

11 WHEREAS: The Covered Product includes three separate sizes of wet slab tamarind blocks in
12 sealed packets, including 200-gram packets (SKU: 78888928440), 500-gram packets (SKU:
13 78888928441), and one-kilogram packets (SKU: 78888928442).

14 WHEREAS: The 60-Day Notice of Violation alleged that Defendants, through the Covered
15 Product, exposed consumers in California to lead—which is listed by the State of California as a
16 chemical pursuant to California Health and Safety Code section 25249.8—without first providing the
17 exposure warnings required by Proposition 65;

18 WHEREAS: No Public Prosecutor commenced an enforcement action concerning the
19 allegations in the 60-Day Notice of Violation;

20 WHEREAS: On July 26, 2023, Plaintiff filed a civil complaint against Defendants in the
21 above-entitled Court alleging that Defendants violated Proposition 65 with regard to the Covered
22 Product (“Complaint”);

23 WHEREAS: Defendants deny Plaintiff’s allegations in the 60-Day Notice of Violation and the
24 Complaint and deny that they have otherwise violated Proposition 65 or engaged in any wrongdoing
25 whatsoever;

26 WHEREAS: Plaintiff and Defendants wish to resolve their differences without the delay,
27 uncertainty, and expense of litigation;

28 NOW THEREFORE BE IT RESOLVED AND AGREED UPON AS BETWEEN PLAINTIFF

1 ACTING IN THE PUBLIC INTEREST AND DEFENDANT AS FOLLOWS:

2 **1. JURISDICTION, VENUE, AND DEFENDANTS’ DENIAL OF LIABILITY**

3 1.1 For purposes of this Consent Judgment, Plaintiff and Defendants (collectively, the
4 “Parties”) agree that: this Court has jurisdiction over the allegations contained within the Complaint;
5 venue of this matter is proper in the County of San Diego; and this Court has jurisdiction to enter this
6 Consent Judgment as a full and final resolution of all claims which were or could have been raised
7 in the Complaint with respect to the Covered Product and of all claims which were or could have been
8 raised by any person or entity based in whole or in part, directly or indirectly, based on the facts alleged
9 in the 60-Day Notice of Violation and/or the Complaint with respect to the Covered Product, including
10 any Proposition 65 claim arising out of an exposure to the Covered Product (collectively, “Proposition
11 65 Claims”).

12 1.2 The Parties enter into this Consent Judgment as a full and final settlement of the
13 Proposition 65 Claims for the purpose of avoiding prolonged and costly litigation and of resolving the
14 issues raised therein both as to past and future conduct. By execution of this Consent Judgment and
15 agreeing to comply with its terms, the Parties do not admit any fact, conclusion of law, or violation of
16 law, nor shall Defendants’ compliance with the Consent Judgment be construed as an admission by
17 Defendants of any fact, conclusion of law, or violation of law. Defendants deny the material, factual,
18 and legal allegations in the 60-Day Notice of Violation and the Complaint and expressly deny any
19 wrongdoing whatsoever.

20 **2. APPLICATION OF THIS CONSENT JUDGMENT AND EFFECTIVE DATE**

21 2.1 The products covered by this Consent Judgment are the Covered Product that
22 Defendants distribute and/or sell in California. This Consent Judgment may apply to and benefit the
23 Parties and their respective officers, directors, shareholders, employees, agents, parent companies,
24 subsidiaries, divisions, franchisees, licensees, customers, distributors, wholesalers, retailers,
25 predecessors, successors, and assigns. This Consent Judgment shall have no application to any Covered
26 Product that Defendants exclusively distribute or sell outside of the State of California and that is not
27 intended for use by California consumers.

28 2.2 “Effective Date” shall mean, with respect to this Consent Judgment, the date on which

1 the Court approves and enters the Consent Judgment.

2 **3. INJUNCTIVE RELIEF**

3 3.1 Reformulation or Warnings. For the Covered Product, Defendants agree to undertake
4 or cause to be undertaken on their behalf, either: (a) reformulation of the Covered Product so that it
5 complies with the reformulation requirement set forth in section 3.2 below; or (b) provision of the
6 warnings set forth in section 3.3 below. Compliance with either section 3.2 or 3.3 below shall
7 constitute compliance by Defendants with Proposition 65 regarding exposure to lead in the Covered
8 Product.

9 3.2 Reformulation. The Covered Product shall be deemed to comply with Proposition 65
10 and be exempt from any Proposition 65 warning requirements with respect to lead if the Covered
11 Product contains no more than 0.5 micrograms of lead per serving, with the serving size equaling the
12 serving size specified on the label for the Covered Product. If a serving size is no longer specified on
13 the label for the Covered Product, the serving size shall be deemed, for purposes of this section 3.2, to
14 be 15 grams (which was the serving size indicated on the Covered Product's label at the time the 60-
15 Day Notice of Violation in this matter was served).

16 3.3 Warnings. If the Covered Product does not comply with section 3.2 above, Defendants
17 shall use one of the two following warning content options ("Warning Content"):

18 Option 1:

19 **WARNING:** Consuming this product can expose you to lead, which is known to the
20 State of California to cause [cancer and] birth defects or other reproductive harm. For
21 more information go to www.P65Warnings.ca.gov/food.

22 Option 2:

23 **WARNING:** [Cancer and] Reproductive Harm - <http://www.p65warnings.ca.gov/food>.

24 Defendants shall use the phrase "cancer and" in the Warning Content if Defendants have reason
25 to believe that the Covered Product contains more than 15 micrograms of lead per serving, with the
26 serving size equaling the serving size specified on the label for the Covered Product. If a serving size
27 is no longer specified on the label for the Covered Product, the serving size shall be deemed, for
28 purposes of this section 3.3, to be 15 grams.

1 Defendants shall provide the Warning Content to California consumers in a manner that
2 complies with the methods of transmission set forth in 27 C.C.R. section 25602(a). In addition, for
3 any Covered Product sold over the Internet by Defendants, the Warning Content shall appear prior to
4 checkout on the primary product page; as a pop-up when a California zip code is input for the shipping
5 address for the Covered Product on the checkout page; or on the checkout page in full text or through
6 a clearly marked hyperlink using the word “WARNING” in all capital and bold letters when a
7 California shipping address is input for any purchase of any Covered Product. If a hyperlink is used,
8 the hyperlink must go directly to a page prominently displaying either the Option 1 Warning Content
9 or the Option 2 Warning Content without other content that detracts from the Warning Content. An
10 asterisk or other identifying method must be used to identify which products on the checkout page are
11 subject to the Warning Content.

12 The Warning Content shall be at least the same size as the largest of any other health or safety
13 warnings also appearing on the label (or website, if applicable) and the word “WARNING” shall be
14 in all capital letters and in bold print. No statements intended to or likely to have the effect of
15 diminishing the impact of the Warning Content on the average lay person shall accompany the
16 Warning Content. Further, no statements may accompany the Warning Content that state or imply that
17 the source of the listed chemical has an impact on, or results in, a less harmful effect of the listed
18 chemical.

19 For the Option 2 Warning Content, a symbol consisting of a black exclamation point in a
20 yellow equilateral triangle with a bold black outline shall be placed to the left of the text of the Warning
21 Content, in a size no smaller than the height of the word “WARNING.”

22 Defendants must display or direct consumers to the above Warning Content with such
23 conspicuousness, as compared to other words, statements, or designs on the label, or on their websites
24 (if applicable) to render the Warning Content likely to be read and understood by an ordinary
25 individual under customary conditions of purchase or use of the product.

26 For purposes of this Consent Judgment, the term “label” means a display of written, printed,
27 or graphic material that is printed on, or affixed to, the Covered Product or its immediate container or
28 wrapper.

1 For purposes of this Consent Judgment, where Defendants are required to provide a warning
2 for a Covered Product, Defendants may satisfy the warning requirement by providing, to any business
3 that is subject to Proposition 65 and to which Defendants are selling or transferring the Covered
4 Product, the required information in compliance with 27 C.C.R. section 25600.2 (2020).

5 3.4 Exemption for Previously Manufactured Covered Product. The warning requirements
6 in section 3.3 shall only be required as to Covered Product manufactured after the Effective Date.
7 Covered Product manufactured on or before the Effective Date is hereby deemed exempt from
8 Proposition 65 warnings with respect to lead.

9 3.5 Changes to Proposition 65. If, after the Effective Date, changes are enacted to
10 Proposition 65 or its implementing regulations which require the use of additional or different
11 information on any warning applicable to the Covered Product (“New Warnings”), the Parties agree
12 that the New Warnings may be used in place of the warnings set forth in section 3.3.

13 4. MONETARY RELIEF

14 4.1 Civil Penalty. Defendants shall collectively pay a total of four thousand dollars
15 (\$4,000.00) as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be
16 allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75%
17 of the Civil Penalty remitted to the Office of Environmental Health Hazard Assessment (“OEHHA”)
18 and the remaining 25% of the Civil Penalty remitted to Eden. The Civil Penalty payments shall be
19 delivered to the addresses identified in § 4.3, below. Defendants shall be jointly and severally liable for
20 payment of the Civil Penalty.

21 4.2 Date for Payment of Civil Penalty. Within three (3) days of the Effective Date, Defendants
22 shall collectively issue two separate checks for the Civil Penalty payment: one check made payable to
23 “OEHHA” in the amount of three thousand dollars (\$3,000.00); and one check made payable to “Ramy
24 Eden” in the amount of one thousand dollars (\$1,000.00). The Civil Penalty payment shall be delivered
25 to the addresses identified in § 4.3, below.

26 4.3 Payment Procedures.

27 (a) Issuance of Payments. Payments shall be delivered as follows:
28

- 1 (i) The Civil Penalty payment owed to Eden shall be delivered to the
2 address set forth in Eden’s IRS Form W-9;
- 3 (ii) The Civil Penalty payment owed to OEHHA shall be delivered
4 directly to OEHHA (Memo Line “Prop 65 Penalties”) at the
5 following addresses:

6 For United States Postal Service Delivery:
7 Mike Gyurics
8 Fiscal Operations Branch Chief
9 Office of Environmental Health Hazard Assessment
10 P.O. Box 4010
11 Sacramento, CA 95812-4010

12 For Non-United States Postal Service Delivery:
13 Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
16 1001 I Street
17 Sacramento, CA 95814

18 (b) Copy of Payment to OEHHA. Defendants agree to provide Eden’s counsel
19 with a copy of the check payable to OEHHA, simultaneous with their penalty payments to
20 Eden, which copy shall be delivered to the address provided in § 7.1(a), as proof of payment
21 to OEHHA.

22 (c) Tax Documentation. Within five (5) days of the Parties fully executing this
23 Consent Judgment, Eden shall provide IRS W-9 forms for each of the following payees:

- 24 (i) “Ramy Eden”;
- 25 (ii) “Jarrett Charo APC” (EIN: 84-2408511); and
- 26 (iii) “Office of Environmental Health Hazard Assessment” (EIN: 68-
27 0284486).

28 4.4 Attorney’s Fees and Costs. Defendants shall collectively pay a total of nineteen
thousand dollars (\$19,000.00) to Plaintiff’s counsel, Jarrett Charo APC, which is entitled to attorney’s
fees and costs incurred by it in this action including, without limitation, investigating potential
violations, bringing this matter to Defendants’ attention, prosecuting this action in court, and
negotiating a settlement in the public interest. Within three (3) days of the Effective Date, Defendants

1 shall collectively issue one check payable to “Jarrett Charo APC” in the amount of nineteen thousand
2 dollars (\$19,000.00) and deliver it to the address identified in § 7.1(a), below. Defendants shall be jointly
3 and severally liable for this payment.

4 **5. CLAIMS COVERED AND RELEASED**

5 5.1 This Consent Judgment is a full, final and binding resolution between Plaintiff on
6 behalf of himself and in the public interest, and Defendants and their respective officers, directors,
7 members, shareholders, employees, attorneys, agents, parent companies, subsidiaries, divisions,
8 affiliates, suppliers, franchisees, licensees, and retailers, their parent and all subsidiaries and affiliates
9 thereof, their respective employees, agents and assigns, as well as all other upstream and downstream
10 entities in the distribution chain for the Covered Products (collectively, the “Released Parties”).

11 5.2 Plaintiff’s Release of Released Parties. Plaintiff, acting on his own behalf and in the
12 public interest, releases the Released Parties from all claims, actions, causes of actions, suits, demands,
13 liability, damages, penalties, fees, costs, and expenses asserted or which could have been asserted from
14 the handling or consumption of the Covered Product, as to any alleged violations of Proposition 65 or
15 its implementing regulations up through the Effective Date based on exposure to lead from the
16 Covered Product as alleged in the 60-Day Notice of Violation and/or the Complaint. Compliance with
17 the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
18 exposure to lead from the Covered Product.

19 5.3 Defendants’ Release of Eden. Defendants, on behalf of themselves, their past and
20 current agents, representatives, attorneys, successors and/or assignees, each hereby waives any and all
21 claims against Eden, his attorneys, and other representatives for any and all actions taken or statements
22 made (or those that could have been taken or made) by Eden and/or his attorneys and other
23 representatives, whether in the course of investigating claims, bringing the 60-Day Notice of
24 Violation, prosecution of this action, or otherwise seeking to enforce Proposition 65 against
25 Defendants in this matter, or with respect to the Covered Product.

26 5.4 California Civil Code § 1542. It is possible that other claims not known to the Parties
27 arising out of the facts alleged in this matter and relating to alleged violations of Proposition 65
28 concerning the Covered Product will develop or be discovered. Eden on behalf of himself only, on

1 one hand, and Defendants, on the other hand, acknowledge that this Consent Judgment is expressly
2 intended to cover and include all such claims up through the Effective Date, including all rights of
3 action therefor. The Parties acknowledge that the claims released may include unknown claims, and
4 nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil
5 Code § 1542 reads as follows:

6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
7 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
8 FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY
9 HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
10 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

11 The Parties each acknowledge and understand the significance and consequences of this
12 specific waiver of California Civil Code § 1542.

13 **6. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f) AND MOTION**
14 **FOR COURT APPROVAL**

15 6.1 Eden agrees to comply with the reporting requirements referenced in California Health
16 & Safety Code § 25249.7(f) and to promptly bring a motion for approval of this Consent Judgment.
17 Defendants agree not to oppose such motion.

18 **7. NOTICES**

19 7.1 Unless specified herein, all correspondence and notices required to be provided
20 pursuant to this Consent Judgment to any Party shall be in writing and personally delivered or sent to
21 that Party—via: (i) email; (ii) first-class registered or certified mail with return receipt requested; or
22 (iii) overnight or two-day courier—at the following addresses:

23 (a). For Eden
24 Jarrett S. Charo
25 Jarrett Charo APC
26 4079 Governor Drive, No. 1018
27 San Diego, CA 92122
28 jcharo@charolaw.com

(b). For Defendants:
Christian Picone
Berliner Cohen LLP
10 Almaden Blvd., 11th Floor
San Jose, CA 95113
Christian.Picone@berliner.com

7.2 Any Party, from time to time, may specify in writing to any other Party a change of

1 address to which all notices and other communications from that other Party shall be sent.
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4 **8. COURT APPROVAL**

5 8.1 This Consent Judgment shall not become effective until approved and entered by the
6 Court. If this Consent Judgment is not entered by the Court, it shall be of no force or effect, and shall
7 not be introduced into evidence or otherwise used in any proceeding for any purpose.

8 **9. GOVERNING LAW**

9 9.1 The terms of this Consent Judgment shall be governed by the law of the State of
10 California.

11 **10. ENTIRE AGREEMENT**

12 10.1 This Consent Judgment contains the sole and entire agreement of the Parties with
13 respect to the entire subject matter herein, and any and all prior negotiations and understandings
14 related hereto shall be deemed to have been merged within it. No representations or terms of
15 agreement other than those contained herein exist or have been made by any Party with respect to the
16 other Party or the subject matter hereof.

17 **11. MODIFICATION**

18 11.1 No supplementation, modification, waiver, or termination of this Consent Judgment
19 shall be binding unless executed in writing by the Party to be bound thereby and approved and ordered
20 by the Court; or upon the Court granting a motion brought by any of the Parties. In the event
21 Proposition 65 is repealed or preempted as to the Covered Product, then Defendants shall have no
22 further obligation pursuant to this Consent Judgment with respect to, and to the extent that, the Covered
23 Product is so affected.

24 **12. RETENTION OF JURISDICTION**

25 12.1 This Court shall retain jurisdiction of this matter to implement, enforce, or modify the
26 Consent Judgment. Any alleged breach of the terms of this Consent Judgment shall be brought in this
27 Court.

28 **13. COUNTERPARTS: SIGNATURES**

1 13.1 This Consent Judgment may be executed in counterparts and by facsimile, .pdf signature,
2 or DocuSign signature, each of which shall be deemed an original, and all of which, when taken
3 together, shall constitute one and the same document. Any photocopy of the executed Consent
4 Judgment shall have the same force and effect as the original.

5 **14. AUTHORIZATION**

6 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by
7 the Party he or she represents to stipulate to this Consent Judgment and has read, understood, and
8 agrees to each of the terms and conditions contained herein.

9 **15. SEVERABILITY**

10 15.1 If, subsequent to Court approval of this Consent Judgment, any part or provision is
11 declared by a Court to be invalid, void, or unenforceable, the remaining portions or provisions shall
12 continue in full force and effect.

13 **STIPULATED AND AGREED TO:**

14 Dated: 10/12/2023

15 DocuSigned by:
16 By: Ramy Eden
Ramy Eden 02B41A...

17 Dated: Oct 22, 2023
18 By: [Signature]
19 Sanjay Birla, on behalf of Hathi Brand Foods Inc.

20 Dated:
21 By: _____
22 Hiren Patel, on behalf of SD Pioneer Food Inc.

23 **APPROVED AS TO FORM:**

24 Dated: 10/12/2023

25 DocuSigned by:
26 By: Jarrett Charo
3C86C930C6CC4C9...
27 Jarrett Charo, Esq., attorney for Plaintiff Ramy Eden

28 Dated:

1 13.1 This Consent Judgment may be executed in counterparts and by facsimile, .pdf signature,
2 or DocuSign signature, each of which shall be deemed an original, and all of which, when taken
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11 declared by a Court to be invalid, void, or unenforceable, the remaining portions or provisions shall
12 continue in full force and effect.

13 **STIPULATED AND AGREED TO:**

14 Dated: 10/12/2023

15 DocuSigned by:
16 By: Ramy Eden
17 Ramy Eden 02B41A...

18 Dated:

19 By: _____
20 Sanjay Birla, on behalf of Hathi Brand Foods Inc.

21 Dated: 10/17/23

22 By: Hiren Patel
Hiren Patel, on behalf of SD Pioneer Food Inc.

23 **APPROVED AS TO FORM:**

24 Dated: 10/12/2023

25 DocuSigned by:
26 By: Jarrett Charo
3C86C930C6CC4C9...

27 Jarrett Charo, Esq., attorney for Plaintiff Ramy Eden

28

Dated: October 23, 2023

By: 

Christian Picone, Esq., attorney for Defendants
Hathi Brand Foods Inc. and SD Pioneer Food Inc.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Dated: _____

Judge of the Superior Court

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