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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

| | | |
|--|---|-------------------------------|
| PEOPLE OF THE STATE OF CALIFORNIA, ex rel. |) | CASE NO.: BC 318207 AND |
| BILL LOCKYER, Attorney General, ROCKARD J. |) | RELATED CASE NOS: |
| DELGADILLO, Los Angeles City Attorney, |) | BC318216 and BC321570 |
| THOMAS J. ORLOFF, Alameda Country District |) | |
| Attorney |) | [PROPOSED] CONSENT |
| |) | JUDGMENT RESOLVING CLAIMS |
| |) | AGAINST DEFENDANTS: EFFEM |
| |) | MEXICO y COMPANIA S.N.C. de |
| |) | C.V., MASTERFOODS USA, INC., |
| |) | GRUPO LORENA, S.A. de C.V., |
| ALPRO ALIMENTO PROTEINICOS, S.A. de C.V., |) | CANDY POP, S.A. de C.V., |
| et al., |) | DISTRIBUIDORA DE DULCES |
| |) | IBRO, S.A. de C.V., MARIA |
| |) | TERESA IBARRA ROBLES, AND |
| |) | DULCES LA FRESA, S.A. de C.V. |

Department: 311

Plaintiff, the People of the State of California, ex rel. Bill Lockyer, Attorney General (“Attorney General”); Rockard J. Delgadillo, Los Angeles City Attorney; and Thomas J. Orloff, Alameda County District Attorney (“People”), and the Center for Environmental Health (“CEH”) and the Environmental Health Coalition (“EHC”) (the People, CEH, and EHC are all collectively referred to herein as “Plaintiffs”) and the undersigned defendants, including any “Opt-in Defendants” (as defined in Paragraph 16 below), (collectively referred to herein as the “Settling Defendants”) enter into this Consent Judgment as follows:^{2/}

1. INTRODUCTION

1.1 On July 9, 2004, the People, filed their complaint (the “People’s Action”), captioned as *People v. Alpro Alimento Proteinicos, S.A. de C. V. et al.*, in the Los Angeles County Superior Court. The People alleged that the named defendants violated the California Safe Drinking Water and Toxic Enforcement Act, California Health & Safety Code sections 25249.5 et seq. (“Proposition 65”) and Business & Professions Code section 17200 et seq. (“Unfair Competition Law”) by exposing California consumers to lead, which was present in defendants’ Mexican-style candy products, without first providing “clear and reasonable” warnings. Pursuant to Proposition 65, lead has been placed on the Governor’s lists of chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

1.2 The People filed their complaint (“Complaint”) after commencing their own investigation, examining “60-Day Notices of Violation,” (the “Notices”) that CEH served on public enforcement agencies and defendants, and engaging in discussions with EHC, a public interest environmental justice organization that had undertaken efforts to investigate and address issues relating to lead in Mexican-style candy.

1.3 Settling Defendants are companies that employ ten or more persons and are persons involved in the manufacture of Mexican-style candy products that are sold in California to California consumers. The Settling Defendants who initially are signing this Consent

1. The People and Settling Defendants are collectively referred to herein as the “Parties.”

Judgment (“Original Settling Defendants”) are Effem Mexico y Compania S.N.C. de C.V., Grupo Lorena S.A. de C.V., Candy Pop, S.A. de C.V., and Dulces Vero, S.A. de C.V.^{2/} Other Settling Defendants may “opt in” to this settlement pursuant to the provisions of Section 16, below.

1.4 On July 9, 2004, CEH brought an action in the public interest captioned as *Center for Environmental Health v. Candy Pop S.A. de C. V., et al.*, Los Angeles Superior Court Case No. BC 318216 (hereinafter “CEH Action”) naming many of the same defendants that are named in the People’s Complaint, and alleging that such defendants violated Business & Professions Code sections 17200 et seq. by exposing persons to lead present in defendants’ Mexican-style candy products, without first providing “clear and reasonable” warnings pursuant to Proposition 65.

1.5 On September 15, 2004, EHC brought an action in the public interest captioned as *Environmental Health Coalition v. Canel’s S.A. de C. V., et al.*, Los Angeles Superior Court Case No. BC 321570 (hereinafter “EHC Action”) naming many of the same defendants that are named in the People’s Complaint, and alleging that such defendants violated Business & Professions Code sections 17200 et seq. by exposing persons to lead present in defendants’ Mexican-style candy products, without first providing “clear and reasonable” warnings pursuant to Proposition 65.

1.6 On November 2, 2004 the voters enacted Proposition 64, which imposed certain restrictions on private plaintiff’s enforcement of Business & Professions Code sections 17200 et seq. The application of these restrictions to pending cases has not been raised in CEH’s or EHC’s Actions to date, but has been the subject of conflicting Court of Appeal decisions and is likely to be addressed through disposition of other cases currently pending before the California Supreme Court. Defendants’ obligations under this Consent Judgment will continue irrespective

2. Hershey Mexico S.A. de C.V. shall also be deemed to be an Original Settling Defendant as corporate successor to certain of Grupo Lorena S.A. de C.V.’s assets. Dulces Vero, S.A. de C.V. is the corporate successor to Distribuidora de Dulces Ibro, S.A. de C.V., Dulces La Fresa, S.A. de C.V. and other companies that were members of a consortium formerly known as “Grupo Dulces Vero” of which Candy Pop S.A. de C.V. and María Teresa Ibarra Robles were also members.

1 of any decision by the Supreme Court as to the retroactive effect of Proposition 64.

2 1.7 On May 9, 2005, the People's Action and the CEH and EHC Actions were related
3 by order of this Court, with the People's Action, Los Angeles County Superior Court Case No.
4 BC318207, being designated as the lead case. The Parties intend that entry of this Consent
5 Judgment shall have the effect of consolidating the three cases pursuant to California Code of
6 Civil Procedure §1048.

7 1.8 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
8 Court has jurisdiction over the allegations of violations contained in the Plaintiffs' Complaints
9 (ii) this Court has personal jurisdiction over Settling Defendants for the purposes of enforcing
10 the terms of this Consent Judgment, (iii) venue is proper in the County of Los Angeles, and (iv)
11 this Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution of
12 the allegations contained in Plaintiffs' Complaints, and of all claims which were or could have
13 been raised by any person or entity based in whole or in part, directly or indirectly, on the facts
14 alleged in the Notices, in Plaintiffs' Complaints, in the CEH or EHC Actions, or arising
15 therefrom or related thereto. Each Settling Defendant agrees not to challenge or object to entry of
16 this Consent Judgment by the Court unless Plaintiffs have notified that Settling Defendant in
17 writing that Plaintiffs no longer support entry of this Consent Judgment or that the People seek to
18 modify this Consent Judgment. Settling Defendants agree not to challenge this Court's
19 jurisdiction to enforce the terms of this Consent Judgment once it has been entered.

20 1.9 The Parties enter into this Consent Judgment pursuant to a settlement of certain
21 disputed claims as alleged in Plaintiffs' Complaints and Notices, for the purpose of avoiding
22 prolonged and costly litigation and resolving the issues raised therein. By execution of this
23 Consent Judgment, the Settling Defendants do not admit any fact, conclusion of law, or violation
24 of law, including, but not limited to, any violations of Proposition 65, the Unfair Competition
25 Law or any other statutory, common law or equitable requirements. Neither this Consent
26 Judgment, nor compliance with this Consent Judgment, shall be construed as an admission by
27 any Settling Defendants of any fact, conclusion of law, issue of law or violation of law. Nothing
28 in this Consent Judgment shall prejudice, waive or impair any argument or defense the Settling

1 Defendants may have in this or any other pending or future legal proceedings. Nothing in this
2 Consent Judgment shall preclude the Plaintiffs from opposing any such defense or argument, and
3 nothing in this Consent Judgment shall be construed as Plaintiffs' acceptance of, or agreement
4 with, any defenses or contentions of fact or law that Defendants may have asserted.
5 Nevertheless, Settling Defendants' obligations, responsibilities and duties shall remain as set
6 forth in this Consent Judgment unless (i) a modification has been entered by the Court as set
7 forth in Paragraph 15 below, or (ii) the People have terminated this Consent Judgment pursuant
8 to Paragraph 7 below.

9 **2. DEFINITIONS**

10 For the purposes of this Consent Judgment, the following terms shall have the indicated
11 meanings:

12 2.1 "Compliance Documentation" shall mean (i) the results of the testing required by
13 Paragraph 3.1.5, and (ii) the analysis of Packaging Materials required by Paragraph 3.1.8.

14 2.2 "Candy Product" means any confectionary sold for individual consumption that
15 contains either of the following:

16 (1) in excess of one percent (1%) chili, tamarind or imitation tamarind, or

17 (2) in excess of ten percent (10%) salt.

18 2.3 "California Candy Products" means any Candy Product that a Settling Defendant
19 produces or distributes after the Effective Date that (i) is sold in California and (ii) does not
20 contain the restriction (described in paragraph 3.1.7., below) "ATENCION: PUEDE
21 CONTENER PLOMO. NO PARA VENTA EN CALIFORNIA."

22 2.4 The "Effective Date" of this Consent Judgment, with respect to the Original
23 Settling Defendants, shall mean the date upon which this Court enters this Consent Judgment.
24 The "Effective Date" of this Consent Judgment, with respect to any "Opt-In Defendants" as
25 defined in Paragraph 16, below, shall mean the date upon which the Opt-In Stipulation for that
26 particular Opt-In Defendant is filed with this Court.

27 2.5 "Independent Food Processing Auditor" shall mean an auditing company that (i)
28 has extensive knowledge of good manufacturing practices in the food processing industry and

1 significant experience in inspecting food processing facilities to ensure compliance with good
2 manufacturing practices, (ii) has provided a resume of its qualifications sufficient to address the
3 Food Processing Association (“FPA”) certification criteria used for the FPA-Safe Program to the
4 Attorney General and (iii) has received the Attorney General’s approval to conduct the audits
5 required by this Consent Judgment. The following auditing companies have previously
6 submitted their qualifications to the Attorney General and are deemed to meet the criteria set
7 forth in this Paragraph: AIB, FPA, SCS, Sumner Analytical Services, and Cooke and Thurber.

8 2.6 “Small Candy Producer” shall mean any company, domiciled outside of the
9 United States, that employs between twenty-five (25) and fifty (50) persons and whose business
10 includes the manufacture of Candy Products.

11 2.7 “Micro Candy Producer” shall mean any company, domiciled outside of the
12 United States, that employs ten (10) to twenty-four (24) persons and whose business includes
13 the manufacture of Candy Products.

14 2.8 “Packaging Materials” shall mean the containers or wrappers for Settling
15 Defendants’ individual California Candy Products which come in direct contact with food or
16 which can result in exposure to lead from reasonably foreseeable hand to mouth contact or
17 mouthing by the consumer.

18 2.10 “Qualified Laboratories” shall mean the laboratory used has demonstrated
19 proficiency to conduct lead analysis using ICP-MS on chili-containing products or using either
20 ICP-MS or GFAAS on Packaging Materials as determined by current satisfactory performance
21 in the Food Analysis Performance Scheme (“FAPAS”) program administered by Central Science
22 Laboratory, York, UK. The following laboratories are deemed to have met the preceding
23 requirement for a period of one-year from the Effective Date, at which point they will need to re-
24 demonstrate to the Attorney General their ability to meet the requirements of the preceding
25 sentence: Covance, CIATEJ, National Food Labs, West Coast Analytical Services. The Attorney
26 General shall confirm whether additional laboratories will be deemed to have met this
27 requirement upon submission of appropriate FAPAS documentation.

28 **3. INJUNCTIVE RELIEF**

1 3.1 Lead Reduction Measures. Settling Defendants agree to reduce the lead content in
2 their California Candy Products and associated Packaging Materials in accordance with the
3 terms set forth below such that no warnings for lead will be required pursuant to Proposition 65.

4 3.1.1 Independent Audit. Each Settling Defendant will do the following:

5 (a) Retain Independent Food Processing Auditor. Within three (3) months
6 following the Effective Date, each Settling Defendant will retain an Independent Food
7 Processing Auditor to conduct annual inspections of each of its facilities used to manufacture
8 California Candy Products for the purpose of ensuring that each such facility is employing all
9 good manufacturing practices, procedures and purchasing controls/ingredient standards
10 necessary to reduce lead in its products to the lowest level then currently feasible (“GMPs”). In
11 conducting the audit(s) required by this subparagraph, the Independent Food Processing Auditor
12 shall confirm that each facility has implemented GMPs based on the lead-related GMP checklist
13 attached as Exhibit A to this Consent Judgment; and

14 (b) Obtain Written Certification from the Independent Food Processing Auditor.
15 Within six (6) months of the Effective Date, each Settling Defendant will obtain written
16 certification from the Independent Food Processing Auditor that the inspection(s) required
17 pursuant to subparagraph 3.1.1(a) have been completed utilizing the lead-related GMP checklist
18 attached as Exhibit A and that the auditor’s recommendations (if any) have been fully and
19 satisfactorily addressed.

20 3.1.2 Safeguards on Ingredient Chili. Within six (6) months following the Effective
21 Date, each Settling Defendant shall purchase ground chili products for use in their California
22 Candy Products from only those suppliers who have done the following: (i) retained an
23 Independent Food Processing Auditor(s) to conduct annual inspections of each of the suppliers’
24 chili grinding/processing facilities which produce chili powder sold for use in California Candy
25 Products, for the purpose of ensuring that each such facility is employing GMPs necessary to
26 reduce lead in their chili products sold for use in California Candy Products; the inspection shall
27 be based on the lead related GMP checklist set forth in Exhibit B to this Consent Judgment; and
28 (ii) obtained written certification by the Independent Food Processing Auditor(s) that the

inspection(s) have been completed and that the GMPs have been implemented.

(a) Certain Suppliers Pre-Approved For the Initial Audit Year. The following chili suppliers are deemed to have met the preceding requirements for a period of one-year from the Effective Date, but only with respect to chili powders that have been processed from chilis that have been cleaned/washed prior to grinding:

DASA, Frudest, Andrade, Vallabhdas Kanji Ltd.

At the end of the one-year period, each of these suppliers must re-demonstrate its ability to meet the requirements of section 3.1.2, by submitting an Independent Food Processing Auditor's certification to the Attorney General. The Attorney General shall confirm whether additional chili suppliers will be entitled to the pre-approval granted under this subparagraph (a) upon submission of appropriate documentation from such suppliers; any such submission may be made as confidential business (trade secret) information, in which event the Attorney General shall deem it obtained in the course of an enforcement investigation and not disclose it unless otherwise compelled by law.

3.1.3 GMP Auditing-Related Submittals to the Attorney General.

(a) Initial Certification. By no later than six (6) months following the Effective Date, each Settling Defendant shall provide the Attorney General with certification from the Independent Food Processing Auditor(s) demonstrating that the requirements of subparagraphs 3.1.1 and 3.1.2 (for California Candy Products and related chili processing facilities respectively) have been fully met.

(b) Annual Recertification. Beginning on June 30, 2007, each Settling Defendant shall provide the Attorney General with annual certification from the Independent Food Processing Auditor retained pursuant to subparagraphs 3.1.1 and 3.1.2 (for California Candy Products and related chili processing facilities respectively), demonstrating that the required annual inspections have been completed, that substantial compliance has been demonstrated, and that the Auditor's recommendations as to non-substantial compliance items (if any) have been satisfactorily addressed within thirty (30) days. For purposes of the preceding sentence, "substantial compliance" shall mean having no "critical deficiencies" (i.e., conditions that result

1 or would likely result in the addition of lead into the product in question); items for which
2 “critical deficiencies” exist are delineated on the lead-related GMP checklists attached as
3 Exhibits A and B to this Consent Judgment.

4 (c) Lists of Certified Manufacturers/Brands/Names of California Candy Products. Upon
5 receipt of the information required by 3.1.5(a) and the certifications required by subparagraphs
6 3.1.3, 3.1.5(b) and 3.1.10, the Attorney General shall maintain and make available to the public a
7 list of state approved California Candy Products by name of company and/or by brand(s) of that
8 company, or, where not all of a company’s and/or brands’ Candy Products are manufactured in a
9 manner consistent with this Consent Judgment’s requirements for California Candy Products, by
10 the names of each certified line of California Candy Product.

11 (d) Failure to Timely Submit Proper Certifications/Recertifications. The Attorney
12 General shall remove any Settling Defendant that fails to meet the requirements set forth in
13 subparagraphs 3.1.3(a), 3.1.3(b), and 3.1.10 from the State of California’s list of approved
14 California Candy Products, and such Settling Defendant shall not ship California Candy
15 Products for sale in the State of California. If the Independent Food Processing Auditor
16 thereafter certifies that it has re-inspected the facility(ies) for which initial certifications or
17 annual recertifications were not timely submitted and confirms that such facility(ies) are in full
18 compliance with the lead-related GMP checklists attached as Exhibits A and B (as applicable)
19 and that the testing requirements set forth in subparagraphs 3.1.5 and 3.1.8 have been met and
20 that the test results demonstrate that the lead standards set forth in subparagraphs 3.1.6 and 3.1.9
21 have been complied with, the Settling Defendant may submit such certification/recertification to
22 the Attorney General and, unless the Attorney General objects within 30 days, proceed to ship its
23 California Candy Products for sale in California.

24 3.1.4 Reduction in Frequency of Audits. Once a Settling Defendant, or a Settling
25 Defendant’s chili supplier, has satisfactorily completed three (3) consecutive annual audits in
26 accordance with the terms of this Consent Judgment, then the requirements of subparagraphs
27 3.1.1-3.1.3 may be addressed through a formal, documented internal auditing program (“Internal
28 Auditing Program”) that has been approved in advance by an Independent Food Processing

1 Auditor with notification thereof provided to Attorney General. Once the Internal Auditing
2 Program has been approved, the Settling Defendant shall supply the Attorney General with
3 written annual certifications for an additional three years showing that such internal audits have
4 been completed and GMPs have been met. Thereafter, each Settling Defendant shall keep its
5 Internal Auditing Program in effect, but the obligation to submit annual certifications to the
6 Attorney General shall be suspended. In the event that the Attorney General thereafter
7 determines that such a Settling Defendant has sold California Candy Products with lead in excess
8 of the levels set forth in paragraphs 3.1.6 or has otherwise violated any provision of this Consent
9 Judgment, the Attorney General may instruct that Settling Defendant to resume conducting
10 audits using an Independent Food Processing Auditor, and providing certification of such audits,
11 on an annual or biennial basis to the extent and for the duration that the Attorney General deems
12 necessary.

13 3.1.5 Testing Requirements for California Candy Products. Beginning within three (3)
14 months following the Effective Date, each Settling Defendant will perform, using Qualified
15 Laboratories employing a limit of quantitation (“LOQ”) of 50 parts per billion (“ppb”) (i.e.,
16 0.050 parts per million (“ppm”)) or lower, quarterly lead content testing of each family of its
17 California Candy Products pursuant to the sampling and testing protocol contained in Exhibit C
18 to this Judgment. For purposes of this Consent Judgment, a family of California Candy Products
19 (“Product Family”) is defined as all products made with the same formula or recipe except as to
20 minor variations, which variations do not involve the use of chili, tamarind, imitation tamarind
21 or salt.^{3/}

22 (a) Product Families and Newly Developed Products. Within three (3) months following
23 the Effective Date, each Settling Defendant shall develop and thereafter maintain a list of its
24 current California Candy Product Families and shall provide this list to the Attorney General
25 upon request and with each certification required by paragraph 3.1.10, who shall maintain it as
26 confidential business (trade secret) information obtained in the course of an enforcement

27
28 3. For example, products that contain the same ingredients in approximately the same proportions but
differ in the color used would be considered in the same Product Family.

1 investigation and treat it accordingly. The list shall include all brand and product line names in
2 each California Candy Product Family. Notwithstanding the aforementioned confidentiality, the
3 Attorney General may, if necessary, use information from the Settling Defendants' lists to
4 prepare its list of California Candy Products as set forth in paragraph 3.1.3(c), and to conduct
5 confirmatory testing.

6 (b) New Products. Within sixty (60) days of introducing a new California Candy
7 Product, the Settling Defendant will prepare a certification based on the recipe for that new
8 product; this certification shall indicate either: (1) that the new product meets the requirements
9 necessary to fall within an existing California Candy Product Family, or (2) that the new product
10 shall be considered to establish a new California Candy Product Family and shall independently
11 be subject to the testing requirements of this subparagraph 3.1.5. Based on this certification, the
12 Settling Defendant shall, as necessary, amend its Product Family list to include the new
13 California Candy Product, and shall supply the amended list to the Attorney General upon
14 request, who shall maintain it subject to the same restrictions set forth above in subparagraph (a).

15 (c) Maintenance of List of Product Families. The list of Product Families to be
16 developed and maintained pursuant to subparagraphs 3.1.5(a) and 3.1.5(b) shall be provided to
17 the Independent Food Processing Auditor retained for purposes of subparagraph 3.1.1 in
18 conjunction with its review of testing records pursuant to subparagraph 3.1.10 below.

19 (d) Reduction in Frequency of Testing. Following the satisfactory completion of four (4)
20 consecutive quarterly tests for a particular Product Family, testing as to that Product Family may
21 be reduced to a semi-annual frequency. Following the satisfactory completion of a total of eight
22 (8) consecutive tests as to a Product Family, testing as to that Product Family may be suspended.
23 In the event the Attorney General thereafter determines that a Settling Defendant has sold
24 California Candy Products containing lead in excess of the Maximum Lead Level specified in
25 subparagraph 3.1.6 below, the Attorney General may instruct the Settling Defendant to resume
26 quarterly or semi-annual testing as to that Product Family for the duration the Attorney General
27 deems necessary.

28 3.1.6 Lead Levels for California Candy Products. The "Maximum Lead Level" is 100

1 ppb (i.e., 0.100 ppm). As of the Effective Date, a Settling Defendant shall not manufacture or
2 distribute any California Candy Products from a Product Family for which the result (as
3 measured as an arithmetic average of the samples of a particular Product Family from a single lot
4 pursuant to the sampling and testing protocol set forth in subparagraph 3.1.5 above) exceeds the
5 Maximum Lead Level. The Maximum Lead Level is an interim level which the Attorney
6 General has determined shall be used for purposes of Health & Safety Code § 110552(c)(3),
7 pending promulgation of a regulations of the lead level to be established pursuant to Health &
8 Safety Code § 110552(c)(3).

9 (a) Potential Reevaluation. In the event the Attorney General determines it necessary to
10 protect the public's health and is otherwise in the public interest, the Maximum Lead Level set
11 forth in subparagraph 3.1.6 above shall be subject to reevaluation three (3) years following the
12 Effective Date. At that time, the Attorney General may convene a committee composed of
13 invitations extended to a representative of the California Department of Health Services' Food
14 and Drug Division, a representative of the U.S. Food and Drug Administration^{4/}, a representative
15 selected by the Attorney General, and two representatives of the Original Settling Defendants
16 (collectively, the "Technical Committee") to reevaluate the Maximum Lead Level. The
17 Technical Committee shall, if they deem it warranted, recommend a new Maximum Lead Level
18 ("New Maximum Lead Level") based on the presumptions that:

19 (i) 0.5 micrograms/day of lead can be present in California Candy Products pursuant to
20 California Code of Regulations, title 22, section 12805(b); and

21 (ii) additional naturally occurring concentrations of lead, which do not yield a total
22 concentration that exceeds .100 ppm, can be present in California Candy Products
23 pursuant to section 12501(a) of Proposition 65's regulations if:

24 (a) it is not avoidable by good agricultural or good manufacturing practices, and

25 (b) candy manufacturers and chili producers at all times utilize quality control

26
27 4. In the event that the Department of Health Services or the Food and Drug
28 Administration declines the Attorney General's invitation, the Attorney General may, after
meeting and conferring with Settling Defendants, issue invitations to other persons with relevant
expertise.

1 measures that reduce lead to the “lowest level currently feasible,” as that term is
2 used in Title 21, Code of Federal Regulations, Section 110.110, subdivision (c)
3 (2001).

4 In addition to other relevant considerations, the Technical Committee shall, in
5 deliberating concerning item (ii) above, review the following:

6 (1) A statistical analysis of chili powder and finished product lead data; any such
7 data provided to the Technical Committee by the Attorney General should be
8 provided without identifying the name of the manufacturer which submitted the
9 data.

10 (2) A review of lead-related GMPs then being employed in food processing
11 operations and the need for potential updates, if any, to the GMP checklists
12 attached hereto as Exhibits A and B.

13 (3) A review of practical advances, if any, in procedures for removing external
14 lead from chilis and in quality control methods in general.

15 Based on the Technical Committee’s report and items (i) and (ii) above, and after meeting and
16 conferring with the Parties, the Attorney General may make a written determination of the New
17 Maximum Lead Level. Such new Maximum Lead Level shall replace the Maximum Lead Level
18 set forth in subparagraph 3.1.6(a) above within one hundred twenty (120) days unless a Settling
19 Defendant moves to challenge it before this Court within 60 days, in which event its
20 effectiveness shall be stayed until the challenge is resolved. Such written determination by the
21 Attorney General if not challenged, or a final decision by the Court in the event of a challenge,
22 shall be considered the new interim “naturally occurring level” pursuant to Health & Safety Code
23 § 110552(c)(3), pending promulgation of a regulation defining the lead level pursuant to Health
24 & Safety Code § 110552(c)(3).

25 (b) Outlier Limitation. The Parties recognize that lead levels in California Candy
26 Products will have some degree of inherent variability notwithstanding the use of chili from
27 suppliers meeting the requirements of subparagraph 3.1.2 above and, therefore, individual
28 samples of California Candy Products may from time to time contain lead in excess of the

1 Maximum Lead Level as defined above. However, in no event shall an individual sample of any
2 California Candy Product as measured by a Qualified Laboratory pursuant to the testing method
3 set forth in subparagraph 3.1.5 above exceed a lead level of 150 ppb (0.150 ppm). If a new
4 Maximum Lead Level is established pursuant to subparagraph 3.1.6(a), the Attorney General, in
5 consultation with the Technical Committee, shall also set a corresponding new Outlier
6 Limitation level and LOQ.

7 (c) In the event that a Settling Defendant's testing shows that the averaged result for a
8 Settling Defendant's Product Family contains lead in excess of the Maximum Lead Level
9 specified by subparagraph 3.1.6, or that one sample in that testing exceeds the Outlier Limitation
10 level, the Settling Defendant shall not sell the lot which was tested and shall promptly notify the
11 Attorney General in writing of the laboratory results showing elevated lead levels in the Settling
12 Defendant's California Candy Product Family. The Settling Defendant will also: (i) consult with
13 its Independent Food Processing Auditor, (ii) attempt to locate the source of elevated lead seen
14 in the laboratory results, and (iii) provide the Attorney General with a report on this investigation
15 and a proposal to prevent the situation from occurring in the future. On approval by the Attorney
16 General, the affected Settling Defendant will implement this proposal. Before it resumes selling
17 candy from the Product Family in question, the Settling Defendant shall re-conduct the testing of
18 the Product Family, and demonstrate to the Attorney General that the testing yields results that
19 do not exceed the Maximum Lead Level and Outlier Limitation.

20 3.1.7 Labeling Candy Products Not Intended for Sale in California. This Consent
21 Judgment does not restrain Settling Defendants from manufacturing, selling, or distributing
22 Candy Products with a lead level in excess of the Maximum Lead Level or Outlier Limitation
23 specified by subparagraph 3.1.6 (as measured pursuant to the sampling and testing protocol set
24 forth in Exhibit C) to markets outside the State of California. However, the Parties recognize
25 that such Candy Products may later be shipped for sale to California retailers and consumers
26 through "grey market" channels. Accordingly, beginning within three (3) months following the
27 Effective Date, in the event that a Settling Defendant chooses to manufacture Candy Products
28 that (i) yield test results in excess of the Maximum Lead Level or Outlier Limitation, or (ii)

otherwise are not manufactured in accordance with the requirements of subparagraphs 3.1.1, 3.1.2 and 3.1.9, the Settling Defendant shall label each retail unit of that Candy Product in Spanish as follows: “ATENCION: PUEDE CONTENER PLOMO. NO PARA VENTA EN CALIFORNIA.”^{5/} This statement shall be in capital letters, in 9 point or greater type font.

3.1.8 Testing Packaging Materials Used for California Candy Products. Within three (3) months of the Effective Date, each Settling Defendant will perform, or require each of its suppliers of Packaging Materials which may be used for California Candy Products to perform, lead testing of a single sample of each type of Packaging Materials used with California Candy Products; the testing shall be done at Qualified Laboratories using ICP-MS or GFAAS with an LOQ of 100 ppb, to substantiate that the lead levels specified in subparagraph 3.1.9 below have been met pursuant to the applicable testing protocol set forth in subparagraph 3.1.9. below. For purposes of this Consent Judgment, a “type” of Packaging Materials (“Packaging Family”) is defined as ceramic containers, paper, foil, molded plastic, flexible polyester/propylene/metal or laminate of polyester/propylene/metal.^{6/} Whenever Packaging Materials are changed to include new materials or components or whenever Packaging Materials are acquired from a new manufacturer, new testing to confirm that the requirements of subparagraph 3.1.9 have been met is required prior to their use.

3.1.9 Maximum Lead Levels for Packaging Materials. The following requirements apply to Packaging Materials for California Candy Products:

(a) Limitation on Lead Content A Settling Defendant shall not sell, or distribute for sale, any California Candy Products in Packaging Materials that: (a) if they are ceramic, leach lead in excess of 100 ppb (i.e., 0.100 ppm) of lead when tested pursuant to ASTM Method C-738 (24-hour acetic acid leaching protocol); (b) if they are not ceramic, contain any intentionally added

5. At a Settling Defendant’s option, a reference to the United States may be used in lieu of the above reference to “California.”

6. Inks and glazes are not a Packaging Materials, but rather may be a component of a Packaging Material and a change in the type of inks or glazes used in a Packaging Family will result in a new Packaging Family being created and, hence, the need for a new test to be performed at a Qualified Laboratory to ensure that the requirements of subparagraph 3.1.9 are met.

1 lead or, if no lead has been intentionally added, contain lead in excess of 20 ppm based on total
2 lead content analysis following complete digestion of the Packaging Material in nitric acid.

3 (b) Film-encased Packaging Material. If a Settling Defendant uses Packaging Materials
4 that contain lead but are encased by film that is intended to be a barrier to the migration of that
5 lead, the Settling Defendant must show that the film acts as an effective barrier to the migration
6 of lead from the Packaging Materials to the candy. The Settling Defendant may propose, for the
7 Attorney General's review and approval, a protocol and testing requirement that Settling
8 Defendants may use in making such a showing ("Film Packaging Protocol"). If the Attorney
9 General approves a Film Packaging Protocol, the Attorney General will file it as an amendment
10 denoted as "Exhibit D" to this Consent Judgment, and the Consent Judgment will be deemed to
11 be so amended. If this Judgment is so amended, any Settling Defendant using Packaging
12 Materials encased by films may comply with the Film Packaging Protocol, and the provisions of
13 Exhibit D, as an alternative to the Packaging Material requirements of paragraph 3.1.9(a).

14 3.1.10 Compliance Documentation as to Testing of California Candy Products and
15 related Packaging Materials. Within no more than six (6) months after the Effective Date, and
16 thereafter on an annual basis, each Settling Defendant will provide the Attorney General with
17 certification from the Independent Food Processing Auditor they retain pursuant to subparagraph
18 3.1.1 above attesting to their compliance with the testing requirements set forth in subparagraphs
19 3.1.5 and 3.1.8 and, based on those test results, the lead standards set forth in subparagraphs
20 3.1.6 and 3.1.9 as to all Families of California Candy Products and associated Packaging
21 Materials respectively. These certifications shall be based on the Independent Food Processing
22 Auditor's firsthand review of the Compliance Documentation in conjunction with the list of
23 Product Families to be developed and maintained pursuant to subparagraph 3.1.5(a) above.
24 Thereafter, each Settling Defendant shall maintain records documenting their ongoing
25 compliance with the testing requirements set forth in subparagraphs 3.1.5 and 3.1.8 and provide
26 such Compliance Documentation to the Independent Food Processing Auditor retained for
27 purposes of subparagraph 3.1.1, who shall inspect such records annually in conjunction with
28 their GMP audit and certify to the AG that the testing requirements set forth in subparagraphs

1 3.1.5 and 3.1.8 have continued to be met and that the lead standards set forth in subparagraphs
2 3.1.6 and 3.1.9 have continued to be complied with as to all Families of California Candy
3 Products and associated Packaging Materials respectively.

4 (a) In addition to providing the certifications to the Attorney General as described above,
5 if a Settling Defendants' testing for a Product Family of any California Candy Product results in
6 an arithmetic average pursuant to the sampling and testing protocol set forth in Exhibit C which
7 exceeds the Maximum Lead Level or a single result in excess of the Outlier Limitation, the
8 Settling Defendant shall (i) promptly inform the Attorney General, (ii) upon request, supply the
9 Attorney General with a copy of the test results, and (iii) follow the protocol set forth in 3.1.6(c).

10 (b) Settling Defendants shall, upon request, provide the Attorney General with the results
11 of all of their testing pursuant to subparagraph 3.1.5 for his use in determining whether to
12 conduct a reevaluation pursuant to subparagraph 3.1.6 (a). The Attorney General shall maintain
13 such submissions subject to the same restrictions set forth in paragraph 3.1.5(a); however, he
14 may provide it to the Technical Committee for its use in the reevaluation without identifying the
15 name of the manufacturer which submitted the data. In redacting the data to remove the
16 identifying name of the manufacturer, the Attorney General will maintain a uniform code so that
17 the results from any single manufacturer can still be identified by the Technical Committee as
18 being from a single, unidentified manufacturer.

19 (c) Settling Defendants are required to keep all Compliance Documentation on file, and
20 available to the Attorney General upon request, for a period of four years from the date on which
21 it is created.

22 3.2 Confirmatory Testing. The Plaintiffs intend to conduct periodic sampling of
23 Settling Defendants' California Candy Products; any such testing will be conducted pursuant to
24 the sampling and testing protocols set forth in Exhibit F to this Consent Judgment.
25 ("Confirmatory Testing"). In the event that Confirmatory Testing shows that a sample (as
26 defined in Exhibit F) of a Settling Defendant's Product Family contains lead in excess of the
27 Maximum Lead Level specified by subparagraph 3.1.6, the Parties shall do the following:

28 3.2.1 Lead In Excess of Maximum Lead Level. The Attorney General will promptly

1 notify the affected Settling Defendant in writing of the laboratory results showing elevated lead
2 levels in the Settling Defendant's California Candy Product Family. Following an opportunity to
3 meet and confer concerning the laboratory results, the affected Settling Defendant will, if the
4 Attorney General so requests: (i) consult with its Independent Food Processing Auditor, (ii)
5 attempt to locate the source of elevated lead seen in the laboratory results, and (iii) provide the
6 Attorney General with a report on this investigation and a proposal to prevent the situation from
7 occurring in future. On approval by the Attorney General, the affected Settling Defendant will
8 implement this proposal. The affected Settling Defendant will reimburse Plaintiffs for reasonable
9 laboratory and sample purchasing costs they actually incur in obtaining results finding lead in
10 any California Candy Products at levels exceeding those set forth in subparagraph 3.1.6 (unless
11 such findings are shown to be invalid) and will reimburse the Attorney General for reasonable
12 attorney time incurred in responding to such findings.

13 3.2.2 Lead over the Outlier Limitation or Packaging Material Limits. In the event that
14 Confirmatory Testing conducted pursuant to subparagraph 3.2 shows that lead in excess of 150
15 ppb is present in an individual piece of candy of Settling Defendant's California Candy Products,
16 or that testing conducted at Qualified Laboratories pursuant to the protocols and methods
17 specified in subparagraphs 3.1.8 and 3.1.9 shows that lead in excess of the levels authorized
18 under subsection 3.1.9 is present in a Settling Defendant's Packaging Materials, the Attorney
19 General may, after meeting and conferring with Settling Defendants: (a) invoke the provisions of
20 Section 6 of this Consent Judgment and/or, (b) instruct that Settling Defendant to (i) cease sales
21 of that Candy Product Family and/or Packaging Family until the completion of the process set
22 forth in Paragraph 3.2.1, and/or (ii) conduct testing on each production lot of that California
23 Candy Product (and/or its Product Family) and/or its related types of primary Packaging
24 Materials prior to further shipment of such production lots.

25 3.2.3 In the event that Confirmatory Testing conducted pursuant to subparagraph 3.2
26 shows that lead in excess of 500 ppb is present in an individual piece of Settling Defendant's
27 California Candy Products, the Attorney General may, after meeting and conferring with
28 Defendants, (a) instruct that Settling Defendant to cease sales of that Candy Product Family

and/or Packaging Family and implement the process set forth in Paragraph 3.2.1, (b) instruct that Settling Defendant to institute a recall of that Candy Product Family and/or Packaging Family, and/or (c) file a petition for a temporary restraining order and/or preliminary injunction in this Court, without having to terminate this Consent Judgment in accordance with Section 7.

4. TOTAL SETTLEMENT AMOUNT

The Total Settlement Amount for the Original Settling Defendants is \$1,854,000. A credit of \$900,000 is being applied to the Total Settlement Amount for Original Settling Defendants' past cooperation in the investigation and resolution of the issues in this case. Specifically, Original Settling Defendants, through their representatives, have actively participated in extensive technical investigations into the issues of lead GMPs for candy manufacturers and chili suppliers, have acted as liaisons to the Mexican chili powder processors, and have participated in the negotiation of this Consent Judgment.

The remaining \$954,000 of the Total Settlement Amount will be paid jointly, by Original Settling Defendants, in cash as specified in this Paragraphs 5, 6 and 8.

5. REIMBURSEMENT OF FEES AND COSTS.

5.1 Within thirty (30) days of the Effective Date, Original Settling Defendants shall jointly pay \$475,000, to be divided into the following amounts, as partial reimbursement to Plaintiffs for the attorneys' fees and costs incurred in investigating, bringing, and resolving the People's, CEH's, and EHC's Actions:^{7/}

Office of the Attorney General \$ 90,000

Alameda County District Attorney \$ 55,000

Los Angeles City Attorney \$ 35,000

Environmental Health Coalition \$ 120,000

Center for Environmental Health \$ 175,000

5.2 Payments of the Attorney General's fees and costs shall be by check payable to the

7. The Plaintiffs note that the amount specified above represents only partial reimbursement of Plaintiffs' attorneys' fees and costs and, accordingly, other defendants, including those that become Opt-In Defendants under Section 16 of this Consent Judgment, will need to make further contributions in order to fully reimburse Plaintiffs' for the attorneys' fees and costs they have incurred.

1 Office of the California Attorney General, and shall be sent to:

2 Robert Thomas
3 Legal Analyst
4 Office of the Attorney General
1515 Clay St., 20th Floor,
Oakland, California 94612

5 Funds retained by the Attorney General pursuant to this Paragraph 5 shall be placed in an
6 interest bearing Special Deposit Fund established by the Attorney General. Those funds,
7 including any interest derived therefrom, shall be used by the Attorney General, until all funds
8 are exhausted, for the costs and expenses associated with the enforcement and implementation of
9 the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), including
10 investigations, enforcement actions, other litigation or activities as determined by the Attorney
11 General to be reasonably necessary to carry out his duties and authority under Proposition 65.
12 Such funding may be used for the costs of the Attorney General's investigation, filing fees and
13 other court costs, payment to expert witnesses and technical consultants, purchase of equipment,
14 travel, purchase of written materials, laboratory testing, sample collection, or any other cost
15 associated with the Attorney General's duties or authority under Proposition 65. Funding placed
16 in the Special Deposit Fund pursuant to this Paragraph, and any interest derived therefrom, shall
17 solely and exclusively augment the budget of the Attorney General's Office and in no manner
18 shall supplant or cause any reduction of any portion of the Attorney General's budget.

19 5.3 Payments of the other Plaintiffs' attorneys fees should be made as follows:

20 Payments to the Alameda County District Attorney's Office should be made by check payable to
21 the Alameda County District Attorney's Office, and shall be sent to:

22 Lawrence C. Blazer
23 Senior Deputy District Attorney
24 Alameda County District Attorney's Office
7677 Oakport St., Suite 650
Oakland, California 94621

25 Payments to the Los Angeles City Attorney should be made by check payable to the Los Angeles
26 City Attorney, and shall be sent to:

27 Patricia Bilgin
28 Supervising Attorney, Environmental Justice Unit
200 North Main Street, 500 City Hall East

Los Angeles, CA 90012

Payments to the Environmental Health Coalition should be made by check payable to the Environmental Health Coalition, and shall be sent to:

Suzanne Bevash
Environmental Advocates
232 4th Street
Del Mar, CA 92014

Payments to the Center for Environmental Health should be made by check payable to the Lexington Law Group, LLP, and shall be sent to:

Mark N. Todzo
Lexington Law Group
1627 Irving Street
San Francisco, CA 94122

6. PENALTIES AND STIPULATED PENALTIES.

6.1 Penalties. Within thirty (30) days of the Effective Date, Original Settling Defendants shall jointly pay the following civil penalties: \$100,000.

6.2 Stipulated Penalties. A Settling Defendant shall be individually liable for stipulated penalties, in the amounts set forth below, where the Attorney General determines that any of the following has occurred:

(1) Confirmatory Testing performed pursuant to subparagraph 3.2 of the Settling Defendant's Product Family following invocation of the procedures set forth in subparagraph 3.2.1 with respect to the Product Family in question establishes the presence of lead at an average level in excess of the Maximum Lead Level specified in subparagraph 3.1.6.

| Occurrence | Penalty Amount | |
|------------|--|---|
| | For Companies that can demonstrate that they have complied with Sections 3.1.1 through 3.1.5 of this Consent Judgment | For Companies that cannot demonstrate that they have complied with Sections 3.1.1 through 3.1.5 of this Consent Judgment |

| | | |
|----------------------------------|-------------------------------------|--------------------------------------|
| First Occurrence | \$ 500 per affected Product Family | \$1,000 per affected Product Family |
| Second Occurrence | \$2,500 per affected Product Family | \$5,000 per affected Product Family |
| Third and Subsequent Occurrences | \$5,000 per affected Product Family | \$10,000 per affected Product Family |

(2) Confirmatory Testing performed pursuant to subparagraph 3.2 of a sampling of the Settling Defendant's California Candy Products establishes the presence of lead at levels in excess of 150 ppb or testing performed pursuant to subparagraph 3.2.2 of a sample of Packaging Materials related to a Settling Defendant's California Candy Products establishes the presence of lead in excess of the levels prescribed in subparagraph 3.1.9.

| Occurrence | Penalty Amount | |
|----------------------------------|---|--|
| | For Companies that can demonstrate that they have complied with Sections 3.1.1 through 3.1.5 of this Consent Judgment | For Companies that cannot demonstrate that they have complied with Sections 3.1.1 through 3.1.5 of this Consent Judgment |
| First Occurrence | \$ 500 per affected Product Line or Packaging Family | \$1,000 per affected Product Line or Packaging Family |
| Second Occurrence | \$2,500 per affected Product Line or Packaging Family | \$5,000 per affected Product Line or Packaging Family |
| Third and Subsequent Occurrences | \$5,000 per affected Product Line or Packaging Family | \$10,000 per affected Product Line or Packaging Family |

(3) A Settling Defendant has failed to conduct a periodic audit required by subparagraph

3.1.1. by more than 30 days.

First Occurrence: up to \$1,000 per required audit missed

Second Occurrence: up to \$2,500 per required audit missed

Third Occurrence: up to \$10,000 per required audit missed

(4) A Settling Defendant has failed to ensure through obtaining an appropriate Independent Food Processing Auditor certification that the safeguards with respect to its chili ingredient suppliers required by Subparagraph 3.1.2 have been implemented.

First Occurrence: up to \$1,000 per supplier used without safeguards

Second Occurrence: up to \$2,500 per supplier used without safeguards

Third Occurrence: up to \$10,000 per supplier used without safeguards

(5) A Settling Defendant has failed to timely produce a required item of Compliance Documentation within 30 days of being notified that a submission appears to be missing.

First Occurrence: up to \$1,000 per missing piece of documentation

Second Occurrence: up to \$2,500 per missing piece of documentation

Third Occurrence: up to \$10,000 per missing piece of documentation

The Attorney General may waive or reduce, in whole or in part, any Stipulated Penalty assessment authorized by this section for good cause shown.

6.3. Method of Payment. Penalties to be paid pursuant to this Section shall be made payable to the "Office of the Attorney General" and shall be sent to:

Robert Thomas
Legal Analyst
Office of the Attorney General
1515 Clay St., 20th Floor,
Oakland, California 94612

Penalty monies shall be apportioned by the State in accordance with Health & Safety Code section 25249.12(b), with 75% of these funds remitted to the California Office of Health Hazard Assessment, and the remaining 25% apportioned equally among the Office of the Attorney General, the Los Angeles City Attorney and the Alameda County District Attorney.

7. TERMINATION OF JUDGMENT FOR REPEATED OR SEVERE VIOLATIONS

The Attorney General may move the Court to terminate this Consent Judgment with

1 respect to a Settling Defendant if the Attorney General determines that (a) Confirmatory Testing
2 indicates that the Settling Defendant's California Candy Products are repeatedly sold with
3 average lead levels in excess of the Maximum Lead Level established under subparagraph 3.1.6
4 and the procedures set forth in subparagraph 3.2.1 have been ineffective in reducing those levels,
5 (b) Confirmatory Testing has shown that the Settling Defendant's California Candy Product has
6 repeatedly been sold with lead content in excess of 150 ppb or that testing indicates that the
7 Packaging Materials related to a Settling Defendant's California Candy Products have repeatedly
8 been sold with lead levels in excess of those set forth in subparagraph 3.1.9; (c) the Settling
9 Defendant has repeatedly or consistently failed to comply with the audit and/or certification
10 provisions of subsections 3.1.1 and 3.1.2 of this Consent Judgment, or (d) the Settling Defendant
11 has repeatedly or consistently failed to comply with any other provision of this Consent
12 Judgment. In the event that the Court terminates this Consent Judgment as to a Settling
13 Defendant, then, (i) the People shall retain all their rights, including, without limitation, (1) the
14 right to seek an injunction from this Court, or any other competent court, requiring the Settling
15 Defendant to provide clear and reasonable warnings on its California Candy Products as required
16 by Health and Safety Code section 25249.6, and (2) the right to seek civil penalties from the
17 Settling Defendant for violations of Proposition 65, the Unfair Competition Law and/or any
18 other applicable law or regulation that occur after the entry of this Consent Judgment; (ii) the
19 Settling Defendant will retain all their defenses to any such action; and (iii) the Settling
20 Defendant shall not be entitled to any reimbursement of, or credit for, the amounts paid pursuant
21 to Sections 5, 6 or 8 of this Consent Judgment.

22 **8. GRANTS IN LIEU OF PENALTIES.**

23 8.1 Any process undertaken by the Public Health Trust to identify and choose the
24 entity(ies) that will receive any of the grants to be awarded under this section 8 must be open to
25 public scrutiny and subject to public notice and comment. CEH, EHC, the Alameda County
26 District Attorney and the Los Angeles City Attorney shall have the right to review and comment
27 on any proposed use of the funds, and any use of the funds must be approved by the Attorney
28 General.

1 8.2 Original Settling Defendants shall jointly provide a seed grant of \$379,000 to the
2 Public Health Trust to provide grants, subject to the public selection process set forth in section
3 8.1, for the following purposes (Initial PHT Grant Purposes):

4 (A) Community Outreach: At least \$150,000 of the seed grant money shall be used to
5 fund community outreach programs operated by community-based environmental health
6 or environmental justice organizations for the purpose of informing California
7 consumers/retailers of: (i) issues of lead poisoning in general, (ii) the identities of
8 California Candy Product manufacturers and brands that meet the terms of this Consent
9 Judgment and which may legally be sold in California, and (iii) the importance of
10 avoiding Candy Products that are not made by manufacturers (or associated with brands)
11 appearing on the list to be maintained by the Attorney General pursuant to subparagraph
12 3.1.3(c) above, including, but not limited to those labeled “ATENCION: PUEDE
13 CONTENER PLOMO. NO PARA VENTA EN CALIFORNIA.”

14 (B) Technical Assistance: A minimum of \$24,000 of the seed grant money shall be
15 reserved to subsidize the cost of the auditing and testing work required under this
16 Consent Judgment for Small and Micro Candy Producers. Such subsidies shall not
17 exceed \$2000 per Small or Micro Candy Producer without authorization from the
18 Attorney General and shall be disbursed directly to Independent Food Processing
19 Auditors or Qualified Laboratories to offset the cost of work they perform for Small or
20 Micro Candy Producers.

21 (C) Equipment. Matching funds of approximately 30% percent towards the cost of
22 purchasing an ICP-MS by the California Department Of Health Services Food and Drug
23 Branch and/or by a qualified analytical laboratory located in Mexico, provided any lab in
24 Mexico receiving the grants agrees to furnish analytical services to Mexican candy and
25 chili producers at reduced cost.

26 (D) Recruitment of Opt-In Defendants. To provide funding to an appropriate and
27 qualified organization for expenses and staff time incurred in assisting Opt-In Defendants
28 with the process of entering into, and complying with the terms of, this Consent

1 Judgment.

2 8.3 The Initial PHT Grant Purposes shall be funded with the first \$379,000 in seed
3 money from the Original Settling Defendants. This Consent Judgment also contemplates that
4 Opt-In Defendants may pay settlement amounts directed to the Public Health Trust. It is also
5 anticipated that other settlements with other defendants (“Other Defendants”) in this case may
6 result in additional amounts directed to the Public Health Trust. Such funds directed to the
7 Public Health Trust, from Opt-In Defendants and Other Defendants, may be used to fund any
8 unfunded portions of the Initial PHT Grant Purposes, as well as the following additional PHT
9 Grant Purposes (collectively, PHT Grant Purposes), subject to the public selection process set
10 forth in section 8.1:

11 (A) Additional Community Outreach: To fund community outreach programs operated
12 by (i) the Los Angeles County Health Department for Community Outreach Programs in
13 Los Angeles County and/or (ii) the Lead Poisoning Prevention Department of the
14 Alameda County Community Development Agency, for the purpose of informing
15 California consumers/retailers of: (a) issues of lead poisoning in general, (b) the identities
16 of California Candy Product manufacturers and brands that meet the terms of this
17 Consent Judgment and which may legally be sold in California, and (c) the importance of
18 avoiding Candy Products that are not made by manufacturers (or associated with brands)
19 appearing on the list to be maintained by the Attorney General pursuant to subparagraph
20 3.1.3(c) above, including, but not limited to those labeled “ATENCIÓN: PUEDE
21 CONTENER PLOMO. NO PARA VENTA EN CALIFORNIA.”

22 (B) To provide grants for the study of practical and cost effective means for removing
23 lead from the exterior surface of chilies.

24 (C) To provide funding for a grant recipient to conduct a study of methods to reduce lead
25 in chili powder.

26 (D) To provide subsidies for chili pepper processors located in Mexico to purchase
27 cleaning and processing equipment, such as scrubbers, to be used to reduce dirt
28 contamination.

1 (E) To provide subsidies to enable Small Opt-Ins to retain an Independent Food
2 Processing Auditor to conduct inspections of their candy manufacturing facilities
3 pursuant to subparagraphs 3.1.1 for the purpose of ensuring that those facilities are
4 employing those good manufacturing practices set forth in Exhibit A so as to reduce lead
5 in their California Candy Products to the lowest level currently feasible.

6 (F) To provide subsidies for enabling Small Opt-Ins to perform testing at Qualified
7 Laboratories of Product Families of their California Candy Products and/or related
8 Packaging Families based on the methodologies and protocols specified under
9 subparagraphs 3.1.5, 3.1.8, and 3.1.9 of this Consent Judgment respectively.

10 Any remaining funds shall be used by the Public Health Trust, subject to the public selection
11 process set forth in section 8.1, for the following purposes: to fund projects dedicated to the
12 reduction of lead contamination in Mexican food products and/or to the California Childhood
13 Lead Poisoning Prevention Program.

14 **9. ADDITIONAL ENFORCEMENT ACTIONS; CONTINUING OBLIGATIONS.**

15 By entering into this Consent Judgment, the Plaintiffs do not waive any right to take
16 further enforcement actions regarding any violations not covered by Plaintiffs' Complaints or
17 addressed by the Claims Covered this Consent Judgment as set forth in Section 12 below.
18 Nothing in this Consent Judgment shall be construed as diminishing Settling Defendants'
19 continuing obligation to comply with Proposition 65 or the Unfair Competition Law in their
20 future activities.

21 **10. ENFORCEMENT OF CONSENT JUDGMENT.**

22 The People may, by motion or order to show cause before the Superior Court of Los
23 Angeles, enforce the terms and conditions contained in this Consent Judgment. In any action
24 brought by the People to enforce this Consent Judgment, the People may seek whatever fines,
25 costs, attorneys' fees, penalties or remedies are provided by law for failure to comply with the
26 Consent Judgment. Where said failure to comply constitutes future violations of Proposition 65
27 or other laws, independent of the Consent Judgment and/or those alleged in the Complaint, the
28 People are not limited to enforcement of this Consent Judgment, but may seek in another action,

1 whatever fines, costs, attorneys' fees, penalties or remedies are provided by law for failure to
2 comply with Proposition 65 or other laws. However, the rights of Settling Defendants to defend
3 themselves and their actions in law or equity shall not be abrogated or reduced in any fashion by
4 the terms of this Section and Settling Defendants shall be entitled to raise any and all applicable
5 defenses, arising in law or equity, against the People, except that a Settling Defendant shall not
6 contest their obligation to comply with the terms of this Consent Judgment as long as this
7 consent Judgment remains in effect as to such Settling Defendant.

8 **11. APPLICATION OF CONSENT JUDGMENT.**

9 This Consent Judgment shall apply to, be binding upon and inure to the benefit of, the
10 Parties, their divisions, subdivisions and subsidiaries and the successors or assigns of each of
11 them. Unless otherwise provided herein, any change in ownership, partnership status or
12 corporate status of a Settling Defendant including, but not limited to, any transfer of assets or
13 real or personal property, shall in no way alter such Settling Defendant's responsibilities under
14 this Consent Judgment and each Settling Defendant shall be responsible and shall remain
15 responsible for carrying out all activities required of that Settling Defendant under this Consent
16 Judgment.

17 **12. CLAIMS COVERED**

18 Except as provided elsewhere herein, this Consent Judgment is a final and binding
19 resolution between the Plaintiffs and each Settling Defendant, satisfying and releasing each
20 Settling Defendant, its parents, subsidiaries, affiliates, divisions, brands, predecessors,
21 successors, officers, directors, employees, distributors, retailers and customers from any and all
22 claims, causes of action, damages, costs, penalties or attorneys fees based upon alleged
23 violations of Proposition 65 or the Unfair Competition Law that arise from that Settling
24 Defendant's failure to provide clear and reasonable warnings, pursuant to Proposition 65, with
25 respect to the presence of lead in their Candy Products or Packaging Materials. Compliance with
26 the terms of this Consent Judgment by a Settling Defendant constitutes compliance with
27 Proposition 65 as to lead for that Settling Defendant's Candy Products and Packaging
28

1 Materials.^{8/}

2 **13. ENTIRE AGREEMENT**

3 This Consent Judgment contains the sole and entire agreement and understanding of the
4 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
5 negotiations, commitments and understandings related hereto. No representations, oral or
6 otherwise, express or implied, other than those contained herein have been made by any Party
7 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
8 deemed to exist or to bind any of the Parties.

9 **14. AUTHORIZATION**

10 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
11 Party or entity he or she represents to enter into this Consent Judgment on behalf of the Party or
12 entity represented and legally to bind that Party or Entity.

13 **15. MODIFICATION**

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

17 **16. OPT-IN PROGRAM**

18 16.1 This Consent Judgment is executed with the understanding that additional persons
19 and entities, whether or not previously named in the People’s Action, who are not Original
20 Settling Defendants under this Consent Judgment may wish to be bound by the terms of this
21 Consent Judgment (“Opt-In Defendants”). At any time, within one hundred and twenty (120)
22 days following entry of this Consent Judgment, companies willing to (i) bind themselves to the
23 terms of this Consent Judgment (other than those set forth for the Original Settling Defendants in
24 Sections 4, 5, 6 and 8), (ii) to execute the Stipulation for Entry of Judgment described in section
25 16.2, and (iii) make a payment in an amount to be agreed upon between the Opt-in Defendant

27 8. As Masterfoods USA, Inc. (“Masterfoods”) does not manufacture Candy Products and has only
28 allegedly served as a distributor of Candy Products manufactured by Effem Mexico y Compania S.N.C. de C.V.
 (“Effem”), Masterfoods will be a beneficiary of the liability releases to Effem provided above. Accordingly,
 Masterfoods is not executing this Consent Judgment as an Original Settling Defendant.

1 and the Attorney General, may notify the Attorney General of their desire to participate in this
2 Consent Judgment as Opt-In Defendants. Each Opt-In Defendant shall concurrently provide the
3 Attorney General with its contact names and mailing addresses of all entities wishing to “Opt-
4 In.”

5 16.2 Each company wishing to serve as an Opt-In Defendant shall execute a
6 “Stipulation for Entry of Judgment” in the general form appearing in Exhibit E hereto (“Opt-In
7 Stipulation”) attesting to the number of persons employed by the Opt-In Defendant during the
8 Relevant Period. Opt-In Defendants shall reasonably cooperate in providing additional
9 information or such other representations as the Attorney General may reasonably require.

10 16.3 The Opt-In Defendant must also complete and append to its Opt-In Stipulation, a
11 copy of Exhibit E, and provide a payment to the Attorney General in an amount to be agreed
12 upon between the Opt-in Defendant and the Attorney General. The amount of each Opt-in
13 Defendant’s payment shall be based upon the company’s size, resources and conduct.

14 16.4 Within thirty (30) days of its receipt of an executed Opt-In Stipulation and the
15 required payments of the Opt-In Defendant in question, the Attorney General shall file the Opt-
16 In Stipulation in this Court. At the time any executed Opt-In Stipulation is filed, the Complaint
17 shall be deemed to have been amended to specifically name the Opt-in Defendant that executed
18 the Opt-In Stipulation as a named defendant in this Action and each such Opt-In Defendant shall
19 be deemed to have become a Settling Defendant under this Consent Judgment and will likewise
20 assume all obligations set forth under Section 3, 6, and 7-10 hereunder.

21 16.5 Cooperation In Opt In Process/Ongoing Investigation. In connection with the
22 opt-in provisions of this Consent Judgment and Plaintiffs’ ongoing investigation of lead in
23 Candy Products, Settling Defendants will exercise good faith and commercially reasonable best
24 efforts to provide assistance to Plaintiffs with respect to Candy Product manufacturers, including
25 companies who may exercise Opt-In provisions of this Consent Judgment (“Potential Opt-In
26 Defendants”). Original Settling Defendants will, upon reasonable request from the Attorney
27 General:

28 (a) Voluntarily and timely provide documents and information in Settling

1 Defendants' possession, custody or control, with respect to the identity, location, contact
2 information, sales information and product lines of Potential Opt-In Defendants, except
3 to the extent that such information is legally privileged or otherwise legally protected
4 from disclosure.

5 (b) Provide assistance in locating and contacting the Potential Opt-In Defendants.

6 (c) Provide assistance in explaining the provisions of this Consent Judgment and its
7 Opt-In provisions to the Potential Opt-In Defendants.

8 (d) Provide assistance to the Environmental Health Coalition in gaining entry to and
9 attending the Candy Exposition to be held in Guadalajara in or around August, 2006,^{9/}
10 and further in informing attendees at the Exposition of (i) the terms of this Consent
11 Judgment and its Opt-In provisions and (ii) the potential availability of subsidies for
12 environmental audits and testing to be conducted pursuant to this Consent Judgment.

13 **17. ENTRY OF JUDGMENT REQUIRED**

14 This Consent Judgment shall be null and void, and be without any force or effect, unless
15 entered by the Court in this matter. Upon the entry of this Consent Judgment, the Peoples'
16 Action, CEH's Action, and EHC's Action shall be deemed consolidated pursuant to California
17 Code of Civil Procedure §1048. If the Consent Judgment is not entered by the Court, the
18 execution of this Consent Judgment by Settling Defendants or the Plaintiffs shall not be
19 construed as an admission by Settling Defendants or the Plaintiffs of any fact, conclusion of law,
20 issue of law, or violation of law and consolidation may only be effected through further
21 application or motion to the Court.

22 **18. RETENTION OF JURISDICTION**

23 This Court shall retain jurisdiction over this matter and the Parties to this Consent
24 Judgment, in order to implement all of the terms of this Consent Judgment.

25 **19. GOVERNING LAW**

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28 9. The assistance will be a donation in the amount of \$8,000 by the Original Settling
Defendants to EHC for purposes of funding EHC's preparation for and travel to the Candy
Exposition.

1 The terms of this Consent Judgment shall be governed by the laws of the State of
2 California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by
3 reason or operation of law as to Candy Products, then Settling Defendants shall have no further
4 obligations pursuant to this Consent Judgment.

5 **20. NO EFFECT ON OTHER CONSENT JUDGMENTS IN THIS ACTION**

6 Nothing in this Judgment shall alter or weaken the injunctive relief required by any other
7 Consent Judgment that the Court enters in this Action.

8 **21. NOTICES**

9 21.1 All correspondence to the People shall be mailed simultaneously to:

10 Dennis A. Ragen
11 Deputy Attorney General Office of
12 the Attorney General
110 West A Street, Suite 1100
13 San Diego, CA 92101

14 Robert Thomas
15 Legal Analyst Office of the Attorney
General
16 1515 Clay St., 20th Floor
Oakland, California 94612

17 21.2 All correspondence to Original Settling Defendants shall be mailed to Michele
18 Corash and Robert Falk, Morrison & Foerster LLP, 425 Market Street, San Francisco, California
19 94105 with a copy to the affected Settling Defendant(s) at the address shown in Exhibit G.

20 21.3 All correspondence to Settling Defendants who are Opt-In Defendants pursuant to
21 Section 16 above shall be mailed to the affected Settling Defendant(s) at the address shown in
22 Exhibit G.

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1 **22. COUNTERPARTS AND FACSIMILE**

2 This Consent Judgment may be executed in counterparts and facsimile, each of which
3 shall be deemed an original, and all of which, when taken together, shall constitute one and the
4 same document.

5 AGREED TO ON BEHALF OF THE
6 PEOPLE OF THE STATE OF
7 CALIFORNIA:

8 BILL LOCKYER, Attorney General
of the State of California
9 THOMAS GREENE
Chief Assistant Attorney General
10 THEODORA BERGER
Assistant Attorney General
EDWARD G. WEIL
Supervising Deputy Attorney General
11 DENNIS A. RAGEN
KATHRYN EGOLF
12 Deputy Attorneys General

13 Date: _____

14 By: _____
Kathryn W. Egolf
Deputy Attorney General

15 ROCKARD J. DELGADILLO,
16 City Attorney
PATTY BILGIN,
17 Deputy City Attorneys

18
19 Date: _____

20 By: _____
Patty Bilgin
Deputy City Attorney

21 THOMAS J. ORLOFF, District Attorney
22 County of Alameda
LAWRENCE C. BLAZER
23 Senior Deputy District Attorney

24 Date: _____

25 By: _____
Lawrence C. Blazer
Senior Deputy District Attorney
26 County of Alameda
27
28

1 AGREED TO ON BEHALF OF
2 CENTER FOR ENVIRONMENTAL
3 HEALTH:

4 Date: _____

By: _____
(PRINT)

5 _____
(SIGNATURE)

6
7 Its: _____
(PRINT)

8 AGREED TO ON BEHALF OF
9 ENVIRONMENTAL HEALTH
10 COALITION

11 Date: _____

By: _____
(PRINT)

12
13 _____
(SIGNATURE)

14 Its: _____
(PRINT)

15
16 AGREED TO ON BEHALF OF
17 EFFEM MEXICO Y COMPANIA
18 S.N.C. DE C.V.:

19 Date: _____

By: _____
(PRINT)

20
21 _____
(SIGNATURE)

22 Its: _____
(PRINT)

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1 AGREED TO ON BEHALF OF
2 GRUPO LORENA S.A. DE C.V.:

3 Date: _____

4 By: _____
(PRINT)

5 _____
(SIGNATURE)

6 Its: _____
7 (PRINT)

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AGREED TO ON BEHALF OF
CANDY POP, S.A. DE C.V.:

Date:_____

By:_____

(PRINT)

(SIGNATURE)

Its: _____

(PRINT)

AGREED TO ON BEHALF OF
DULCES VERO, S.A. DE C.V.:

Date:_____

By:_____

(PRINT)

(SIGNATURE)

Its: _____

(PRINT)