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16  
17 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
18 **FOR THE COUNTY OF LOS ANGELES**

19  
20 PEOPLE OF THE STATE OF CALIFORNIA,  
21 ex rel. BILL LOCKYER, Attorney General, and  
22 ROCKARD J. DELGADILLO, Los Angeles City  
23 Attorney,

24 Plaintiffs,

25 v.

26 PEPSICO, INC., and Does 1 through 150,  
27 inclusive,

28 Defendants.

CASE NO.

**CONSENT JUDGMENT**

1 Plaintiffs, the People of the State of California, ex rel. Bill Lockyer, Attorney General,  
2 and Rockard J. Delgadillo, Los Angeles City Attorney; and defendant, PepsiCo, Inc.  
3 (“PepsiCo”), enter into this Consent Judgment as follows:

4 **1. Introduction.**

5 1.1 On April \_\_\_, 2006, the People filed their complaint (the “Complaint”), captioned  
6 as *People of the State of California v. PepsiCo, Inc.*, et al., in the Los Angeles County Superior  
7 Court. Plaintiffs allege that PepsiCo violated the California Safe Drinking Water and Toxic  
8 Enforcement Act, California Health and Safety Code sections 25249.5 *et seq.* (“Proposition 65”) and  
9 Business and Professions Code section 17200 *et seq.* (“Unfair Competition Law”) by  
10 exposing California consumers to lead and cadmium, without first providing clear and  
11 reasonable warnings, through the following practices:

- 12 (a) the authorization of the manufacture, distribution and sale of beverages  
13 bottled in Mexico in refillable, returnable glass bottles with decorations  
14 that contain lead and cadmium, some of which are ultimately purchased by  
15 consumers in California; and  
16 (b) the sale of soft drink concentrate for the manufacture, distribution and sale  
17 of Mountain Dew beverages bottled at the independently owned Dr.  
18 Pepper Bottling Company of West Jefferson, North Carolina (“West  
19 Jefferson Mountain Dew”), in glass bottles with decorations that contain  
20 lead and cadmium.

21 Both Mexico Pepsi and West Jefferson Mountain Dew have been offered for sale and sold within  
22 the State of California by individuals and entities other than PepsiCo. Plaintiffs further allege  
23 that Mexico Pepsi and West Jefferson Mountain Dew contain detectable amounts of lead and  
24 cadmium. Lead and cadmium are listed under Proposition 65 as “chemical[s] known to the State  
25 of California to cause cancer and birth defects or other reproductive harm.”

26 1.2 The People filed their Complaint after commencing their own investigation,  
27 examining the “Sixty-Day Notice of Violation” (the “Notice”) that Dr. Whitney R. Leeman  
28 served on public enforcement agencies and PepsiCo, and engaging in discussions with

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1 Dr. Leeman, who had undertaken significant efforts to investigate and document exposures to  
2 lead and cadmium in Mexico Pepsi and West Jefferson Mountain Dew.

3 1.3 PepsiCo employs ten or more persons and is a person in the course of doing  
4 business for purposes of Proposition 65.

5 1.4 Plaintiffs and PepsiCo have negotiated settlement of this matter based on the  
6 following understanding: PepsiCo asserts that, for the past sixteen years, it has made a  
7 considerable effort and incurred significant expense to prevent Mexico Pepsi from being sold to  
8 consumers in California, including bringing lawsuits against distributors and retailers in  
9 California which resulted in the issuance of 24 permanent injunctions against the importation and  
10 sale of Mexico Pepsi in California, *see, e.g., PepsiCo, Inc. v. Reyes*, 70 F. Supp. 2d 1057 (C.D.  
11 Cal. 1999); *PepsiCo, Inc. v. Torres*, 1993 U.S. Dist. Lexis 17588 (C.D. Cal. 1993); and *PepsiCo,*  
12 *Inc. v. Triunfo-Mex, Inc.*, 189 F.R.D. 431 (C.D. Cal. 1999); PepsiCo asserts that it does not  
13 intend Mexico Pepsi to be sold in California; that if such bottles are sold in California it is in  
14 violation of Federal and California trademark and Federal unfair competition laws, *see* 15 U.S.C.  
15 §§ 1114, and 1125(a), as well as the Unfair Competition Law, and PepsiCo's trademark rights,  
16 and that such products are imported into the United States and distributed and sold in California  
17 without PepsiCo's consent or authorization and despite PepsiCo's extensive and long-standing  
18 efforts to stop unauthorized Mexico Pepsi from entering or being sold in the United States; and  
19 PepsiCo further asserts than any lead associated with West Jefferson Mountain Dew resulted  
20 from the independent acts of others, about which PepsiCo had no knowledge.

21 1.5 For purposes of this Consent Judgment only, PepsiCo and Plaintiffs stipulate that:  
22 (a) this Court has jurisdiction over the allegations of violations contained in the Complaint on  
23 file herein ("Complaint") and the Notice; (b) this Court has personal jurisdiction over PepsiCo  
24 for the purposes of enforcing the terms of this Consent Judgment; (c) venue is proper in the  
25 County of Los Angeles; and (d) this Court has jurisdiction to enter this Consent Judgment as a  
26 full settlement and resolution of the allegations contained in the Notice and Complaint. PepsiCo  
27 agrees not to challenge or object to entry of this Judgment by the Court unless Plaintiffs have  
28 notified PepsiCo in writing that Plaintiffs no longer support entry of this Consent Judgment or

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1 that Plaintiffs seek to modify this Judgment, in which case PepsiCo may, at its option, withdraw  
2 from this Consent Judgment. PepsiCo agrees not to challenge this Court’s jurisdiction to enforce  
3 the terms of this Consent Judgment once it has been entered.

4 1.6 PepsiCo disputes the allegations of the Complaint and the Notice, and contends  
5 that all Mexico Pepsi and West Jefferson Mountain Dew sold in California comply with all  
6 applicable laws (the violations of which are alleged in the Complaint and Notice) including  
7 Proposition 65 and the Unfair Competition Law. However, the Parties enter into this Consent  
8 Judgment pursuant to a settlement of certain disputed claims between the Parties as alleged in the  
9 Complaint and Notice, for the purpose of avoiding prolonged and costly litigation, and to resolve  
10 all claims arising from the facts alleged in the Complaint and Notice. By execution of this  
11 Consent Judgment, PepsiCo does not admit any fact, conclusion of law, or violation of law,  
12 including, but not limited to, any violations of Proposition 65, the Unfair Competition Law or  
13 any other statutory, common law or equitable requirements. Neither this Consent Judgment, nor  
14 the Parties’ compliance with this Judgment, shall be construed as an admission by PepsiCo of  
15 any fact, conclusion of law, issue of law or violation of law. Except as explicitly set forth herein,  
16 nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument  
17 or defense the Parties may have in this or any other pending or future legal proceedings; nor shall  
18 anything in this Consent Judgment preclude the Parties from opposing any such defense or  
19 argument. Nevertheless, PepsiCo’s obligations, responsibilities and duties shall remain as set  
20 forth in this Consent Judgment unless (a) a modification has been entered by a court of law as set  
21 forth in Section 14, below (Modification); or (b) the Court has terminated this Consent Judgment  
22 pursuant to Section 7, below (Termination of Judgment for Repeated or Severe Violations).

23 **2. Definitions.**

24 For the purposes of this Consent Judgment, the following terms shall have the indicated  
25 meanings:

26 2.1 “Beverage Bottle” refers to all Refillable Bottles and Non-Refillable Bottles, as  
27 those terms are defined herein.

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1           2.2     “Cadmium Free” shall mean Decoration (as defined below) that contains forty-  
2 eight one-hundredths percent (0.48%) cadmium by weight or less, as measured either before or  
3 after the Decoration is fired onto (or otherwise affixed to) the Beverage Bottle, using a sample  
4 size of the materials in question measuring approximately 50-100 mg in weight and a test  
5 method of sufficient sensitivity to establish a limit of quantitation of less than 600 parts per  
6 million (“ppm”).

7           2.3     “Compliance Documentation” shall mean the certifications and reports which  
8 PepsiCo and the Mexico Bottlers are required to submit pursuant to the provisions of Section 3,  
9 below (“Injunctive Relief”).

10          2.4     “Covered Mexico Products” shall mean all carbonated beverages bottled in  
11 Mexico in Refillable Bottles (as defined below) under the authority of, and marketed under  
12 trademarks owned or licensed by, PepsiCo and its majority-owned subsidiaries and affiliates  
13 including, but not limited to, Mexico Pepsi. “Covered Mexico Products” includes the beverage  
14 contained within the Refillable Bottle, as well as the Refillable Bottle itself.

15          2.5     “Covered U.S. Products” shall mean all carbonated beverages bottled under the  
16 authority of PepsiCo within the United States in glass bottles and marketed under trademarks  
17 owned or licensed by PepsiCo and its majority-owned subsidiaries and affiliates, including, but  
18 not limited to, West Jefferson Mountain Dew. “Covered U.S. Products” includes the beverage  
19 contained within the glass bottle, as well as the glass bottle itself.

20          2.6     “Decoration” shall mean the label and any other material that is painted on or  
21 affixed to a Beverage Bottle.

22          2.7     The “Effective Date” of this Consent Judgment shall be 30 days after this Consent  
23 Judgment is approved and entered by the Court.

24          2.8     “Independent Food Processing Auditor” shall mean an auditing company that  
25 (a) has extensive knowledge of good manufacturing practices in the food processing industry and  
26 significant experience in inspecting food processing facilities to insure compliance with good  
27 manufacturing practices; (b) has provided a resume of its qualifications to the Attorney General;  
28 and (c) has received the Attorney General’s approval to conduct the Lead GMP Audits required

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1 by Subsections 3.1.11, 3.1.12 and 3.1.13, below. For purposes of this Consent Judgment, the  
2 following auditors are deemed approved by the Attorney General as Independent Food  
3 Processing Auditors: Lloyd's Register Quality Assurance, Sumner Analytical Services, the  
4 American Institute of Baking International, NSF International, and Silliker Laboratories.  
5 PepsiCo retains the right to seek the Attorney General's approval of an Independent Food  
6 Processing Auditor other than those listed above. If the Attorney General approves another  
7 Independent Food Processing Auditor, PepsiCo shall not be required to retain one of the  
8 Independent Food Processing Auditors named above in this Subsection 2.8.

9           2.9     "Independent Compliance Auditor" shall mean the Independent Food Processing  
10 Auditor or such other auditing firm that (a) has experience in auditing and verifying industrial  
11 practices in the food processing industry; (b) has provided a resume of its qualifications to the  
12 Attorney General; and (c) has received the Attorney General's approval to conduct the Interim  
13 Compliance Audit and the Final Compliance Audit required by Subsections 3.1.5(a) and (b),  
14 below. For purposes of this Consent Judgment, and in addition to the auditors deemed approved  
15 in Subsection 2.8, the following auditors are deemed approved by the Attorney General as  
16 Independent Compliance Auditors: KPMG, PriceWaterhouseCoopers, Deloitte, and Ernst &  
17 Young. PepsiCo retains the right to seek the Attorney General's approval of an Independent  
18 Compliance Auditor other than those identified in this Subsection. If the Attorney General  
19 approves another Independent Compliance Auditor, PepsiCo shall not be required to retain one  
20 of the Independent Compliance Auditors identified in this Subsection 2.9.

21           2.10   "Lead Free" shall mean Decoration that contains six one-hundredths percent  
22 (0.06%) lead by weight or less, as measured either before or after the Decoration is fired onto (or  
23 otherwise affixed to) the Beverage Bottle, using a sample size of the materials in question  
24 measuring approximately 50-100 mg in weight and a test method of sufficient sensitivity to  
25 establish a limit of quantitation of less than 600 ppm.

26           2.11   "Mexico Bottler" shall mean any bottler located in Mexico authorized by PepsiCo  
27 or its subsidiaries or affiliates to manufacture, distribute or sell Covered Mexico Products. As of  
28 the date this Agreement was executed, the complete list of all Mexico Bottlers is Bebida

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1 Purificadas S.A. de C.V., Grupo Embotelladoras del Sureste S.A. de C.V., Grupo  
2 Embotelladoras Unidas S.A. de C.V., and The Pepsi Bottling Group, Inc., and their respective  
3 subsidiaries and affiliates. If PepsiCo should authorize any other bottler located in Mexico to  
4 manufacture, distribute or sell Covered Mexico Products, such bottler shall be deemed a  
5 “Mexico Bottler” pursuant to this Consent Judgment. PepsiCo shall provide an updated list of all  
6 Mexico Bottlers to the Attorney General upon request and within 30 days of any change in the  
7 list of Mexico Bottlers.

8 2.12 “Mexico Pepsi” shall mean any Pepsi-Cola products that are bottled by a Mexico  
9 Bottler. The definition of Mexico Pepsi is limited to this brand of carbonated soda based upon  
10 PepsiCo’s representation that it is unaware of any appreciable quantity of any other brands of  
11 Covered Mexico Products that have been sold to consumers in California within the last two  
12 years preceding the Effective Date of this Consent Judgment.

13 2.13 “Non-Refillable Bottles” shall mean the glass bottles that are explicitly marked  
14 “No Retornable,” “Reciclable,” “Recyclable” or “No Refill” or are otherwise intended,  
15 designated or marked to indicate that the bottles are designed to be recycled or otherwise  
16 disposed of after one use.

17 2.14 “Old Decorated Bottles” shall mean Refillable Bottles of Mexico Pepsi that bear  
18 Decoration that is not “Lead Free.”

19 2.15 The “Parties” are Plaintiffs, the People of the State of California, ex rel. Bill  
20 Lockyer, Attorney General, and Rockard J. Delgadillo, Los Angeles City Attorney; and  
21 Defendant PepsiCo.

22 2.16 “Refillable Bottle” shall mean the glass bottles that are explicitly marked  
23 “Retornable” or “Refillable,” or are otherwise intended, designated or marked to indicate that the  
24 bottles are designed to be returned to be refilled.

25 2.17 “U.S. Pepsi Bottles” shall mean glass bottles with applied ceramic labels (also  
26 known as decorated bottles) containing Covered U.S. Products.

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1    **3.    Injunctive Relief.**

2            3.1    Lead and Cadmium Reduction Measures. The Parties agree that, once the  
3 injunctive relief requirements set forth below are implemented, the lead and cadmium content in  
4 Covered Mexico Products and Covered U.S. Products will be reduced to levels sufficiently low  
5 that no warnings are required. The Parties agree that the Covered Mexico Products and the  
6 Covered U.S. Products shall be deemed to comply with Proposition 65 with respect to lead and  
7 cadmium beginning immediately and continuing so long as PepsiCo complies and remains in  
8 compliance with the requirements of Subsections 3.1.1 through 3.1.13, below.

9            3.1.1   Lead Free Decorations on U.S. Pepsi Bottles. Within 60 days after the  
10                    Effective Date, PepsiCo will formally remind all of its bottlers within the  
11                    United States in writing, substantially in the form attached as Exhibit A,  
12                    that (i) any Covered U.S. Products sold by those bottlers must be Lead  
13                    Free, and (ii) representative samples of any applied ceramic label bottle  
14                    for Covered U.S. Products proposed to be sold to consumers in the United  
15                    States must first be tested by PepsiCo to ensure that such bottle type meets  
16                    this requirement before it may be used by the bottler.

17            3.1.2   Lead Free Decorations on non-Refillable Bottles. All Decoration on  
18                    Non-Refillable Bottles of Covered Mexico Products purchased by PepsiCo  
19                    or the Mexico Bottlers after the Effective Date will be Lead Free.

20            3.1.3   Lead Free Decorations on Newly-made Refillable Bottles. All Decoration  
21                    on Refillable Bottles of Covered Mexico Products purchased by PepsiCo  
22                    or the Mexico Bottlers after the Effective Date will be Lead Free.

23            3.1.4   Cadmium Free Decorations on Newly-made Refillable Bottles. All  
24                    Decoration on Beverage Bottles of Covered Mexico Products purchased  
25                    by PepsiCo or the Mexico Bottlers on or after the third anniversary of the  
26                    Effective Date will be Cadmium Free.

27            3.1.5   Phase out of Old Decorated Bottles of Mexico Pepsi. PepsiCo shall  
28                    implement the phase out of Old Decorated Bottles of Mexico Pepsi

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1 pursuant to the terms set out below. For purposes of demonstrating  
2 compliance with this Subsection 3.1.5 and Subsections 4.1.4 and 4.1.5,  
3 PepsiCo shall conduct Compliance Audits to confirm the phase out of Old  
4 Decorated Bottles. The Compliance Audits shall be conducted in  
5 accordance with the protocol in Exhibit B. Before each Compliance Audit  
6 is conducted, the Independent Compliance Auditor and/or PepsiCo shall  
7 consult with the Attorney General, or as directed by the Attorney General,  
8 the City Attorney and/or Dr. Whitney Leeman, regarding the application  
9 of the sampling protocol and related analysis.

10 (a) Interim Compliance Audit. The Interim Compliance Audit shall be  
11 conducted no later than 42 months following the Effective Date, pursuant  
12 to the protocol attached as Exhibit B, for the purpose of confirming that  
13 Decoration on at least 30% of Refillable Bottles of Mexico Pepsi is Lead  
14 Free. Within 60 days after the Interim Compliance Audit, PepsiCo shall  
15 provide the Plaintiffs with a report from the Independent Compliance  
16 Auditor of its findings (the “Interim Compliance Audit Report”) in  
17 accordance with the protocol in Exhibit B.

18 (b) Final Compliance Audit. The Final Compliance Audit shall be conducted  
19 no later than 122 months following the Effective Date, pursuant to the  
20 protocol in Exhibit B, for the purpose of confirming that Decoration on at  
21 least 95% of Refillable Bottles of Mexico Pepsi is Lead Free.

22 (c) Report. Within 120 days of the Final Compliance Audit, PepsiCo shall  
23 provide the Plaintiffs with a report from the Independent Compliance  
24 Auditor of its findings (the “Compliance Audit Report”) in accordance  
25 with the protocol in Exhibit B. If the Compliance Audit Report confirms  
26 that Decoration on 95% of Refillable Bottles of Mexico Pepsi is Lead Free  
27 as defined in Subsection 2.10, PepsiCo shall be in compliance with this  
28 Subsection 3.1.5. The Parties agree that the use of the 95% compliance

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1 threshold does not dilute PepsiCo's commitment to use its best efforts to  
2 employ all available means to phase out the use of Old Decorated Bottles,  
3 completely, by the tenth anniversary of the Effective Date. In the event  
4 that the Compliance Audit Report demonstrates PepsiCo is not in  
5 compliance with this Subsection by the tenth anniversary of the Effective  
6 Date, PepsiCo will: (i) be subject to the stipulated penalty set forth at  
7 Subsection 4.1.5(d), below; (ii) submit with its Compliance Audit Report a  
8 plan for achieving compliance within six months after the tenth  
9 anniversary of the Effective Date; and (iii) file within twelve months after  
10 such tenth anniversary of the Effective Date a Supplemental Compliance  
11 Audit Report demonstrating compliance. Failure to satisfy the  
12 requirements in (ii) and (iii) of this subparagraph and to pay any stipulated  
13 penalty imposed pursuant to Subsection 4.1.5(d) may be grounds for a  
14 motion seeking termination of the Consent Judgment pursuant to Section 7  
15 with respect to PepsiCo.

16 3.1.6 Polymer Coating. PepsiCo is investigating the feasibility of a polymer  
17 coating process to encapsulate lead and cadmium in Decorations of  
18 Refillable Bottles of Mexico Pepsi. Should PepsiCo determine that a  
19 polymer coating process is feasible, then before implementing such  
20 process for all Refillable Bottles of Mexico Pepsi, PepsiCo will provide  
21 the Attorney General, for his review and approval, technical information  
22 concerning, among other things, the composition, durability, safety,  
23 efficacy and effectiveness of the polymer coating, and such other  
24 information with respect to the polymer coating and its foreseeable use as  
25 the Attorney General may require.

26 (a) In analyzing whether the polymer coating process effectively encapsulates  
27 lead and cadmium on Old Decorated Bottles in a manner sufficient that the  
28 bottles may be considered Lead Free and Cadmium Free, the parties shall

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1 use a modified version of the NIOSH Method No. 9100 test, which shall  
2 detail the test method to be used and the result (in micrograms of cadmium  
3 and lead) to be achieved. PepsiCo shall submit for the Attorney General's  
4 review and approval a draft of such modified NIOSH Method No. 9100  
5 test in the context of carbonated beverage bottles, and the Parties shall  
6 negotiate in a good faith effort to resolve any differences. Should the  
7 parties be unable to resolve any remaining differences on this issue within  
8 90 days or such other period as they shall mutually agree, they will  
9 proceed to mediation before a mutually acceptable mediator, lasting a  
10 maximum of two full days, with PepsiCo bearing such mediator's fees. In  
11 the event that the mediation fails to resolve any differences between the  
12 Parties on this issue, PepsiCo shall present such differences to the Court  
13 for resolution on noticed motion, upon which PepsiCo would bear the  
14 burden of proof.

15 (b) In the event that the Attorney General approves the use of a polymer  
16 coating process pursuant to this section, such approval shall not relieve  
17 PepsiCo of any of its obligations under Section 3 of this Consent  
18 Judgment, but it shall entitle PepsiCo to the penalty reductions set forth in  
19 Sections 4.1.4 and 4.1.5 below, provided that the implementation of the  
20 approved polymer application process occurs before the deadlines  
21 referenced in those sections.

22 3.1.7 No increase in cadmium levels. Existing cadmium levels in the Decoration  
23 on Refillable Bottles of Covered Mexico Products will not increase as a  
24 result of the transition from the current Decoration to Lead Free  
25 Decoration.

26 3.1.8 No Decorations in lip/rim area. Effective immediately upon the date that  
27 this Consent Judgment is entered as a final judgment by the Court, no  
28 Beverage Bottles of Covered Mexico Products will have Decoration or

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1 Lead Free Decoration in the top 20 millimeters of the bottle (“Lip and Rim  
2 Area”). PepsiCo hereby certifies that it has complied with this  
3 requirement.

4 3.1.9 Lead Reduction Processes. On or before the Effective Date, PepsiCo will  
5 implement the following lead reduction practices at each Mexico Bottler:

6 (a) An ethylenediaminetetraacetic acid (“EDTA”) process for Refillable  
7 Bottles of Covered Mexico Product, which will not leave any detectable  
8 residue of EDTA at a 500 ppb limit of detection. The Attorney General  
9 may, after meeting and conferring with PepsiCo and its technical  
10 consultants, request a lower detection limit than 500 ppb based on  
11 scientific evidence of its feasibility. If the Attorney General and PepsiCo  
12 are unable to resolve any differences on this issue within 90 days or such  
13 other period as they shall mutually agree, they will proceed to mediation  
14 before a mutually acceptable mediator, lasting a maximum of one full day,  
15 with PepsiCo bearing such mediator’s fees. In the event that the  
16 mediation fails to resolve any differences on this issue, the Parties may  
17 present such differences to the court for resolution on noticed motion. Use  
18 of the EDTA process will continue until PepsiCo and the Attorney  
19 General mutually agree that its use is no longer necessary or that a  
20 superior alternative should be substituted.

21 (b) Use of a maximum level of 10 ppb lead (after treatment) for ingredient  
22 water, as well as water used to rinse the Refillable Bottles.

23 3.1.10 Required Measures to Keep Old Decorated Bottles out of the California  
24 Market: Supply Chain Inspection and Communication Programs.

25 PepsiCo agrees to conduct the following retail inspection and  
26 communication activities in California:

27 (a) Surveillance by PepsiCo. PepsiCo shall conduct three enforcement  
28 surveys for the purpose of reducing the number of Old Decorated Bottles

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1 of Covered Mexico Products sold in California. Prior to conducting these  
2 surveys, Pepsi shall consult with the Attorney General and the City  
3 Attorney for the purpose of selecting the optimal demographic areas to be  
4 surveyed. As a part of the enforcement survey, PepsiCo, or its agents,  
5 will use best efforts to stop the illegal importation, distribution and/or sale  
6 of Old Decorated Bottles of Covered Mexico Products, except those for  
7 which PepsiCo does not have such ability under applicable trademark and  
8 unfair competition laws. Should PepsiCo discover such sales as a result of  
9 these enforcement surveys, as part of its aforesaid best efforts, it will,  
10 within two months after such survey, first send a cease and desist letter in  
11 English and Spanish substantially in the form attached as Exhibit C to the  
12 retailer making such sales. PepsiCo will conduct follow up investigations  
13 to ascertain whether the sales have, in fact, stopped. Should the retailer not  
14 stop such sales after receiving this letter, PepsiCo shall file suit seeking to  
15 obtain, inter alia, a permanent injunction to stop such sales and an order  
16 requiring the retailer to destroy such Old Decorated Bottles or turn them  
17 over to PepsiCo for destruction.

18 A. First Survey. The first enforcement survey shall be completed  
19 within 120 days of the Effective Date. PepsiCo will inspect no  
20 fewer than 200 retail outlets.

21 B. Subsequent Surveys. Two subsequent enforcement surveys must  
22 each be completed no later than 14 months after the completion  
23 date of the prior survey. In each such survey, PepsiCo  
24 must inspect no fewer than 200 retail outlets.

25 (b) Communication to Retailers and Distributors at which PepsiCo Has  
26 Previously Discovered Old Decorated Bottles. Within 120 days of the  
27 Effective Date, PepsiCo will provide written information substantially in  
28 the form attached hereto as Exhibit D, in English and Spanish, to all

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1                   retailers and distributors at which PepsiCo has found Old Decorated  
2                   Bottles of Covered Mexico Products in the two years preceding the  
3                   Effective Date. The information will inform the recipient that the  
4                   communication is required by the Attorney General. As described above,  
5                   PepsiCo will also provide this information in writing, within two months  
6                   of each survey completion to all retailers identified by PepsiCo during one  
7                   of the enforcement surveys as sellers of Old Decorated Bottles of Covered  
8                   Mexico Products. The sample communication attached to the Consent  
9                   Judgment as Exhibits C and D are deemed to satisfy the information  
10                  requirements of this Subsection when communicated as described herein.  
11                  PepsiCo may, however, provide different communication so long as it  
12                  meets the criteria of Section 3.1.10 and is submitted to the Attorney  
13                  General 15 days before it is sent in satisfaction of Section 3.1.10.

14                  (c) Report to the Attorney General and City Attorney. PepsiCo will report the  
15                  results of each enforcement survey to the Attorney General and the City  
16                  Attorney within 30 days of the completion of the enforcement survey.

17                  (d) Surveillance Activities. If surveillance by the Attorney General, the City  
18                  Attorney or their designees reveals the presence of Old Decorated Bottles  
19                  for sale in California, the party conducting the surveillance may provide  
20                  the name and address of the retailer to PepsiCo at the address identified in  
21                  Section 18. If PepsiCo is informed, pursuant to this Subsection, that a  
22                  retailer is selling Old Decorated Bottles of Covered Mexico Products,  
23                  except those for which PepsiCo does not have the ability to stop the illegal  
24                  importation under applicable trademark and unfair competition laws,  
25                  PepsiCo shall provide the retailer with a copy of the letter attached hereto  
26                  as Exhibit C within 10 business days of such notification. Within thirty  
27                  days of the Effective Date, or later, as directed by the Attorney General,  
28                  PepsiCo shall make a one time payment of \$15,000 to the Attorney

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1 General, the City Attorney, or their designees for the anticipated  
2 surveillance activities performed pursuant to this subsection.

3 3.1.11 Independent Food Processing Auditor - Mexico. Within 120 days of the  
4 Effective Date, PepsiCo will retain one or more Independent Food  
5 Processing Auditors to conduct audits of the Mexico Bottlers in  
6 partnership with PepsiCo International Quality Assurance to ensure that  
7 the Mexico Bottlers are employing good manufacturing practices so that  
8 lead is not added to the Covered Mexico Products in the manufacturing  
9 process (“Lead GMPs”). This audit (“Lead GMP Audit”) shall be  
10 conducted according to the standards and procedures set forth in Exhibit  
11 E. Before the initial Lead GMP Audits are commenced, the Independent  
12 Food Processing Auditor shall consult with the Los Angeles City Attorney  
13 and the Attorney General and the Attorney General’s designees regarding  
14 the application of the Lead GMPs in the audit process. Within thirty days  
15 of the Effective Date, PepsiCo shall make a one-time payment to the  
16 Attorney General, the City Attorney, or his designees in the amount of  
17 \$10,000 as compensation for consultation with the auditing team.

18 3.1.12 First Lead GMP Audit. The first Lead GMP Audit of all Mexico Bottlers  
19 shall be completed by December 31, 2006. Within 30 days of completion  
20 of the first Lead GMP Audit, PepsiCo shall provide the Attorney General  
21 with a written report from the Independent Food Processing Auditor that  
22 the first audits of all Mexico Bottlers have been completed and that each  
23 Mexico Bottler is complying with this Consent Judgment and has achieved  
24 Lead GMPs or each Mexico Bottler who has not complied has an  
25 acceptable and effective corrective action plan in place.

26 3.1.13 Subsequent Lead GMP Audits. If the Independent Food Processing  
27 Auditor has found, during the first Lead GMP Audit, that a Mexico Bottler  
28 requires a corrective action plan for achieving Lead GMPs, the Attorney

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1 General may require the presence of the Independent Food Processing  
2 Auditor during the subsequent audits of such bottler until Lead GMPs  
3 have been demonstrated through the audit process.

4 (a) Second Audit. No later than December 31, 2007, PepsiCo International  
5 Quality Assurance shall audit each of the Mexico Bottlers to confirm that  
6 each bottler has implemented the Lead GMPs as set forth in Exhibit E. No  
7 later than January 31, 2008, PepsiCo shall provide the Attorney General  
8 with a report from PepsiCo International Quality Assurance and, if  
9 applicable, Independent Food Processing Auditor, that the second audits  
10 for each Mexico Bottler have been completed and that each Mexico  
11 Bottler is complying with this Consent Judgment and has achieved Lead  
12 GMPs, or that each Mexico Bottler who has not complied has an  
13 acceptable and effective corrective action plan in place.

14 (b) Third Audit. The third Lead GMP Audit shall be completed no later than  
15 December 31, 2008. The audit shall be conducted by PepsiCo  
16 International Quality Assurance, except that if either the Independent Food  
17 Processing Auditor or PepsiCo International Quality Assurance has found,  
18 during the second Lead GMP Audit, that a Mexico Bottler requires a  
19 corrective action plan for achieving compliance with Lead GMPs, the  
20 Attorney General may require the presence of the Independent Food  
21 Processing Auditor during the third audit of such bottler. No later than  
22 March 1, 2009, PepsiCo shall provide the Attorney General with a report  
23 from PepsiCo International Quality Assurance, and if applicable, the  
24 Independent Food Processing Auditor, that (a) the third audits for each  
25 Mexico Bottler have been completed and that the Mexico Bottlers are in  
26 compliance with all Lead GMPs and all injunctive relief terms set forth in  
27 this Consent Judgment and (b) that the applicable requirements of this  
28 Consent Judgment and the lead reduction factors identified through the

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1 auditing process have been integrated into PepsiCo International Quality  
2 Assurance's ongoing internal auditing practices for Mexico Bottlers and  
3 will be implemented as a module of each subsequent periodic audit (which  
4 shall be conducted at least once every eighteen months) of the Mexico  
5 Bottlers.

6 (c) Additional Audits. In the event that the Attorney General determines that a  
7 Mexico Bottler was not in substantial compliance with Lead GMPs after  
8 implementation of any corrective action plan, the Attorney General may  
9 require that an Independent Food Processing Auditor conduct one or more  
10 additional audits of such Mexico Bottler and report its findings to the  
11 Attorney General until such time as the Attorney General determines that  
12 the Mexico bottler is in substantial compliance with the lead GMPs.

13 3.1.14 Certifications. On the schedule below, PepsiCo will supply Plaintiffs with  
14 written certification, in a form satisfactory to the Attorney General, that it  
15 has complied with the following requirements:  
16 Subsections 3.1.1, 3.1.2, 3.1.3, 3.1.7: 60 days after the Effective Date  
17 Subsection 3.1.4: 60 days after third anniversary of the Effective Date  
18 Subsection 3.1.9: 90 days after the Effective Date.

19 3.1.15 Ongoing Investigation. In connection with Plaintiffs' ongoing  
20 investigation of lead and cadmium in Mexican soft drinks which are sold  
21 in California ("Ongoing Investigation"), PepsiCo will, upon reasonable  
22 notice:

23 (a) voluntarily and timely produce to Plaintiffs documents, records, reports,  
24 memoranda, data and any other tangible evidence, as well as any other  
25 information stored in a computer or other electronic form, that are in  
26 PepsiCo's possession, custody or control, as requested by the Plaintiffs  
27 and relating to the Ongoing Investigation, except to the extent that such  
28 items and information are recognized as legally privileged or otherwise

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1 protected from disclosure and with respect to which the privilege or  
2 protection has not been waived and no exception to the privilege or  
3 protection applies.

4 (b) provide a detailed log for those items of evidence requested by the  
5 Plaintiffs but withheld under a claim of privilege or protection from  
6 disclosure, which log shall, for each item of evidence withheld, provide a  
7 brief description of the item and the specific basis for the assertion of the  
8 privilege or protection.

9 (c) respond completely, truthfully, candidly and promptly to any written  
10 questions or requests for information submitted by the Plaintiffs and  
11 relating to the Ongoing Investigation, except to the extent that the answers  
12 to such questions or responses to such requests would be recognized as  
13 legally privileged or protected from disclosure and with respect to which  
14 the privilege or protection has not been waived and no exception to the  
15 privilege or protection applies.

16 (d) to the extent any item of evidence or information requested by the  
17 Plaintiffs from PepsiCo pursuant to this Consent Judgment is trade secret  
18 or proprietary information protected from disclosure, such evidence or  
19 information shall only be disclosed subject to an appropriate protective  
20 order.

21 (e) to the extent any item of evidence or information requested by the  
22 Plaintiffs from PepsiCo pursuant to this Consent Judgment is subject to a  
23 confidentiality agreement between PepsiCo and a third party, use its “best  
24 efforts” to obtain the third party’s consent to produce such items or to  
25 provide such information to the Plaintiffs.

26 (f) use its “best efforts” to make available for interviews or depositions, as  
27 requested by Plaintiffs and in conjunction with the Investigation, present  
28 and former PepsiCo officials, employees, consultants and other

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1 representatives, with the understanding that any privileges or protections  
2 from disclosure not waived by this Consent Judgment are retained.

3 (g) cooperate with any subsequent settlor that has trademark rights within the  
4 United States over Covered Mexico Products, in that settlor's obligations  
5 to implement Supply Chain Inspection and Communications Programs  
6 similar to those required in Section 3.1.10 of this Consent Judgment.

7 **4. Settlement Amount.**

8 The total settlement amount shall be \$9,750,000, ("Settlement Amount"), which shall be  
9 paid by or credited to PepsiCo subject to the following, terms and conditions:

10 4.1.1 Credit for Cooperation. PepsiCo shall receive a credit of \$4,000,000  
11 against the Penalty Amount in light of (i) PepsiCo's prompt cooperation  
12 with the Attorney General and the City Attorney in resolving this matter:  
13 (ii) PepsiCo's efforts and costs incurred to date toward resolving this  
14 matter; and (iii) PepsiCo's agreement, and its unconditional guarantee of  
15 the Mexico Bottlers' performance, to implement the items of injunctive  
16 relief set forth in the following paragraphs of this Consent Judgment:  
17 3.1.2 (Lead-Free Decorations on non-Refillable Bottles); 3.1.3 (Lead Free  
18 Decorations on Newly-made Refillable Bottles); 3.1.4 (Cadmium Free  
19 Decorations on Newly-made Refillable Bottles); 3.1.7 (No Increase in  
20 Cadmium Levels); 3.1.9 (Lead Reduction Processes).

21 4.1.2 Civil Penalty. Within thirty (30) days of the Effective Date, PepsiCo shall  
22 make a civil penalty payment in the amount of \$1,000,000.

23 4.1.3 Cy pres Payments. PepsiCo shall make payments totaling \$500,000 in  
24 lieu of additional civil penalties, as set forth below:

25 (a) Within thirty (30) days of the Effective Date, PepsiCo shall make a  
26 payment of \$250,000 in lieu of additional civil penalties in order to  
27 provide a grant to the California Public Health Institute ("CPHI") to

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1 provide grants, at its discretion, and subject to such selection and funding  
2 procedures as it may establish, for the following purposes:

3 (i) To provide funding to appropriate and qualified organizations for  
4 expenses and staff time incurred in performing surveillance activities  
5 similar in kind, but in addition to, those provided for in section 3.1.10(d)  
6 of this Consent Judgment.

7 (ii) To provide up to 50% matching fund credits to enable small  
8 companies (having fewer than approximately 75 employees) that are  
9 domiciled in Mexico and that export food products to the United States to  
10 retain a qualified Independent Food Processing Auditor to conduct  
11 inspections of food production and processing activities.

12 (iii) Any remaining funds shall be used by CPHI in its discretion for the  
13 following purposes: to fund projects dedicated to the reduction of lead in  
14 Mexican food products and/or to the program established by California  
15 Health & Safety Code §§ 110552 *et seq.*

16 (b) Within thirty (30) days of the Effective Date, PepsiCo shall make  
17 payments totaling \$250,000 in lieu of additional civil penalties, as follows:

18 (i) \$200,000 as a grant to Physicians for Social Responsibility for the  
19 Healthy Homes Collaborative, which has identified areas in the City of  
20 Los Angeles such as East Los Angeles and South Los Angeles, among  
21 others, as having the greatest need for lead outreach and education. The  
22 grant money shall also be used for public health outreach and education  
23 regarding lead in the Wilmington area.

24 (ii) \$50,000 as a grant to Pacoima Beautiful for lead outreach and  
25 education.

26 4.1.4 Penalty Subject to Credit for Successful Interim Compliance Audit.

27 PepsiCo shall provide the Interim Compliance Audit Report required by  
28 Section 3.1.5(a) within 120 days of the 42-month anniversary of the

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1 Effective Date. If the Interim Compliance Audit Report does not confirm  
2 that the Decoration on at least 30% of the Refillable Bottles of Mexico  
3 Pepsi is Lead Free no later than 42 months after the Effective Date, then  
4 PepsiCo will pay the sum of \$250,000 as a civil penalty; otherwise, such  
5 amount shall not be paid and shall be credited against the Settlement  
6 Amount.

7 4.1.5 Penalty Subject to Credit for Successful Phase-out of Old Decorated  
8 Bottles of Mexico Pepsi.

9 (a) Within 120 days after the seventh anniversary of the Effective Date, if  
10 PepsiCo does not provide the Compliance Audit Report confirming that  
11 the Decoration on at least 95% of the Refillable Bottles of Mexico Pepsi is  
12 Lead Free no later than seven years after the Effective Date, then PepsiCo  
13 shall pay the sum of \$667,000, as a civil penalty; otherwise, such amount  
14 shall not be paid and shall be credited against the Settlement Amount. The  
15 Attorney General, in his discretion, may waive all or part of this penalty  
16 for good cause, based on a showing by PepsiCo that (i) it has taken good  
17 faith and reasonable measures to accelerate the retirement of Old  
18 Decorated Bottles in a timely fashion; (ii) these measures have  
19 substantially succeeded in the phase out of these bottles; and (iii) the  
20 failure to meet the 95% goal was beyond the control of PepsiCo.

21 (b) Within 120 days after the eighth anniversary of the Effective Date, if  
22 PepsiCo does not provide the Compliance Audit Report confirming that  
23 the Decoration on at least 95% of the Refillable Bottles of Mexico Pepsi is  
24 Lead Free no later than eight years after the Effective Date, then PepsiCo  
25 shall pay the sum of \$667,000, as a civil penalty; otherwise, such amount  
26 shall not be paid and shall be credited against the Settlement Amount. The  
27 Attorney General, in his discretion, may waive all or part of this penalty  
28 for good cause, based on a showing by PepsiCo that (i) it has taken good

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1 faith and reasonable measures to accelerate the retirement of Old  
2 Decorated Bottles in a timely fashion; (ii) these measures have  
3 substantially succeeded in the phase out of these bottles; and (iii) the  
4 failure to meet the 95% goal was beyond the control of PepsiCo.

5 (c) Within 120 days after the ninth anniversary of the Effective Date, if  
6 PepsiCo does not provide the Compliance Audit Report confirming that  
7 the Decoration on at least 95% of the Refillable Bottles of Mexico Pepsi is  
8 Lead Free no later than nine years after the Effective Date, then PepsiCo  
9 shall pay the sum of \$666,000, as a civil penalty; otherwise, such amount  
10 shall not be paid and shall be credited against the Settlement Amount.

11 (d) PepsiCo shall provide the Compliance Audit Report within 120 days after  
12 the tenth anniversary of the Effective Date. If the Compliance Audit  
13 Report does not confirm that the Decoration on at least 95% of Refillable  
14 Bottles of Mexico Pepsi is Lead-Free no later than ten years after the  
15 Effective Date, then PepsiCo shall pay the sum of \$2,000,000; otherwise,  
16 such amount shall not be paid and shall be credited against the Settlement  
17 Amount.

18 4.1.6 Means of Payment. Penalty payments required by Subsections 4.1.2, 4.1.4  
19 and 4.1.5 shall be made payable to the “Office of the California Attorney  
20 General,” and shall be sent to:

21 Robert Thomas  
22 Legal Analyst  
23 Office of the Attorney General  
24 1515 Clay St., 20th Floor  
Oakland, California 94612

25 A copy of the check(s) and transmittal letter(s) shall be sent to Dennis A.  
26 Ragen, Deputy Attorney General, 110 West A Street, Suite 1100, San  
27 Diego, CA 92101. Penalty monies shall be apportioned by the State in  
28 accordance with Health & Safety Code section 25249.12(b), with 75% of

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1 these funds remitted to the California Office of Environmental Health  
2 Hazard Assessment, and the remaining 25% apportioned evenly between  
3 the Attorney General and the Los Angeles City Attorney, or according to  
4 any successor provision to section 25249.12(b) in effect at the time the  
5 payment is made.

6 The cy pres payment required by Subsection 4.1.3(a) shall be made  
7 payable to Public Health Institute/Public Health Trust and shall be sent to:

8 The Public Health Trust  
9 180 Grand Avenue  
10 Suite 750  
11 Oakland, CA 94612

12 A copy of the check and transmittal letter for the payment required by  
13 Subsection 4.1.3(a) shall be sent to Dennis A. Ragen, Deputy Attorney  
14 General, 110 West A Street, Suite 1100, San Diego, CA 92101.

15 The cy pres payment required by Subsection 4.1.3(b)(i) shall be made  
16 payable to Physicians for Social Responsibility. The cy pres payment  
17 required by Subsection 4.1.3(b)(ii) shall be made payable to Pacoima  
18 Beautiful. The checks required by Subsections 4.1.3(b)(i) and 4.1.3(b)(ii)  
19 shall be sent to Patty Bilgin, Supervising Attorney, Environmental Justice  
20 Unit, Office of the Los Angeles City Attorney, 200 North Main Street, 500  
21 City Hall East, Los Angeles, CA 90012.

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1 **5. Reimbursement of Fees and Costs.**

2 5.1 Within thirty (30) days of the Effective Date, PepsiCo shall pay the following  
3 amounts to reimburse Plaintiffs for the attorneys' fees and costs of investigating, bringing and  
4 resolving this action.

5 Office of the Attorney General:	\$40,000
6 Los Angeles City Attorney:	\$40,000
7 Dr. Whitney Leeman:	
8 Laboratory Costs	\$105,000
9 Investigative Fees	\$330,000
Attorneys' Fees	\$210,000

10 5.2 Payment to the Attorney General. Payment of the Attorney General's fees and  
11 costs shall be by check payable to the Office of the California Attorney General, and shall be  
12 sent to:

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

16 A copy of the check(s) and transmittal letter(s) shall be sent to Dennis A. Ragen, Deputy  
17 Attorney General, 110 West A Street, Suite 1100, San Diego, CA 92101. Funds retained by the  
18 Attorney General pursuant to this Subsection 5.2 shall be placed in an interest-bearing Special  
19 Deposit Fund established by the Attorney General. Those funds, including any interest derived  
20 therefrom, shall be used by the Attorney General, until all funds are exhausted, for the costs and  
21 expenses associated with the enforcement and implementation of the Safe Drinking Water and  
22 Toxic Enforcement Act of 1986 ("Proposition 65"), including investigations, enforcement  
23 actions, other litigation or activities as determined by the Attorney General to be reasonably  
24 necessary to carry out his duties and authority under Proposition 65. Such funding may be used  
25 for the costs of the Attorney General's investigation, filing fees and other court costs, payment to  
26 expert witnesses and technical consultants, purchase of equipment, travel, purchase of written  
27 materials, laboratory testing, sample collection, or any other cost associated with the Attorney  
28 General's duties or authority under Proposition 65. Funding placed in the Special Deposit Fund

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1 pursuant to this Subsection 5.2, and any interest derived therefrom, shall solely and exclusively  
2 augment the budget of the Attorney General's Office and in no manner shall supplant or cause  
3 any reduction of any portion of the Attorney General's budget.

4 5.3 Payment to the Los Angeles City Attorney. Payment of the Los Angeles City  
5 Attorney's fees and costs shall be by check payable to the Los Angeles City Attorney, and shall  
6 be sent to:

7 Patty Bilgin  
8 Los Angeles City Attorney  
9 500 City Hall East, 200 N. Main Street  
Los Angeles, CA 90012

10 5.4 Payment to the Noticing Party. Payment of Dr. Whitney R. Leeman's fees and  
11 costs shall be made as follows:

12 Hirst & Chanler LLP  
13 The Whitney Building  
14 71 Elm Street, Suite 8  
New Canaan, CT 06840

15 **6. Stipulated Penalties.**

16 PepsiCo shall be liable for stipulated penalties, in an amount determined by the Attorney  
17 General as set forth below, if the Attorney General notifies PepsiCo that he has determined that  
18 any of the violations referenced in Sections 6.1 through 6.3, below, have occurred. PepsiCo shall  
19 make stipulated penalty payments, as set forth in Subsection 6.5, within thirty days of receiving  
20 such notification from the Attorney General.

21 6.1 Compliance Documentation reflects that a Mexico Bottler has failed to timely  
22 conduct or participate in a Lead GMP Audit required by Subsections 3.1.11 through 3.1.13:

23 First Occurrence by a bottler:	up to \$10,000
24 Second Occurrence by that same bottler:	up to \$25,000
25 Third Occurrence and thereafter by that 26 same bottler:	up to \$50,000



1    **7. Termination of Judgment for Repeated or Severe Violations.**

2           The Attorney General by motion or order to show cause may seek to terminate this  
3    Consent Judgment if there is substantial evidence that any of the following conditions exists:

4    (a) PepsiCo has repeatedly, consistently or continuously failed to comply with the audit,  
5    certification or Compliance Documentation requirements of this Consent Judgment; or  
6    (b) PepsiCo has repeatedly, consistently or continuously failed, despite receipt of written demand  
7    from any Plaintiff, to comply with the lead and cadmium reduction requirements set forth in  
8    Subsections 3.1.1 through 3.1.9 of this Consent Judgment. In the event that the Court allows the  
9    Attorney General to terminate this Judgment, then: (a) Plaintiffs shall retain all their rights,  
10   including, without limitation: (1) the right to seek an injunction from this Court, or any other  
11   competent Court, requiring PepsiCo to provide clear and reasonable warnings on their Products  
12   as required by Health and Safety Code section 25249.6, and (2) the right to seek civil penalties  
13   from PepsiCo for violations of Proposition 65, the Unfair Competition Law and/or any other  
14   applicable law or regulation that occur after the entry of this Consent Judgment; (b) PepsiCo will  
15   retain all of its defenses to any such action; and (c) PepsiCo shall not be entitled to  
16   reimbursement of the amounts paid pursuant to Sections 4 (Settlement Amount), 5  
17   (Reimbursement of Fees and Costs), and 6 (Stipulated Penalties) of this Consent Judgment.  
18   Except as otherwise provided in this Consent Judgment, PepsiCo shall have no further obligation  
19   to make payments required by Sections 4 through 6 that fall due after the date that this Judgment  
20   is terminated.

21   **8. Additional Enforcement Actions; Continuing Obligations.**

22           By entering into this Consent Judgment, the Plaintiffs do not waive any right to take  
23    further enforcement actions regarding any violations by PepsiCo that are not covered by the  
24    Complaint or this Consent Judgment. Except as expressly set forth herein, nothing in this  
25    Consent Judgment shall be construed as diminishing PepsiCo's continuing obligation to comply  
26    with Proposition 65 or the Unfair Competition Law in its future activities. Without in any way  
27    limiting the foregoing, Plaintiffs may, after giving sixty days' notice to PepsiCo, move the Court

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1 to obtain additional injunctive relief under this Consent Judgment to the extent that any of the  
2 following occur:

3 (a) At least 2,000 bottles of an individual brand of a Covered Mexico Product,  
4 *other than Mexico Pepsi*, is located for sale in California in Old Decorated  
5 Bottles and the presence of these bottles for sale in California constitutes a  
6 violation of Proposition 65 or the Unfair Competition Law, unless the  
7 Mexico Bottlers of such brand have, prior to receipt of the notice required  
8 by this Section, adopted the lead reduction measures described in  
9 Subsections 3.1.2, 3.1.3, 3.1.4, 3.1.7, 3.1.8, and 3.1.9.

10 (b) The U.S. Consumer Product Safety Commission lowers its standard for  
11 lead in paint to be applied to consumer products to below the current  
12 levels of 0.06% lead by weight (*see* 16 CFR Part 1303 *et seq.*), and similar  
13 reductions in the levels of lead in Decoration on the Covered Mexico  
14 Products or Covered U.S. Products are necessary in order to protect public  
15 health in California.

16 (c) Facts currently unknown to the Plaintiffs arise, and these facts, either by  
17 themselves or in combination with other facts, prove to the Court that the  
18 injunctive relief terms of this Judgment, once they have been fully  
19 implemented, will be insufficient to reduce the lead or cadmium in  
20 Covered Products to below the levels set forth herein at Section 3.

21 The forgoing does not in any way limit defendants' right to oppose such modifications or the  
22 court's discretion to deny Plaintiffs' motion to modify the Consent Judgment.

23 **9. Enforcement of Consent Judgment.**

24 Plaintiffs may, by motion or order to show cause before the Superior Court of  
25 Los Angeles, enforce the terms and conditions contained in this Consent Judgment. In any  
26 action brought by Plaintiffs to enforce this Consent Judgment, Plaintiffs may seek whatever  
27 fines, costs, attorneys' fees, penalties or remedies are provided by law for failure to comply with  
28 the Consent Judgment. Where said failure to comply constitutes future violations of

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1 Proposition 65 or other laws, independent of the Consent Judgment and/or the allegations in the  
2 Complaint, Plaintiffs are not limited to enforcement of this Consent Judgment, but may seek in  
3 another action, subject to satisfaction of any procedural requirements, including notice  
4 requirements, whatever fines, costs, attorneys' fees, penalties or remedies are provided by law  
5 for failure to comply with Proposition 65 or other laws. However, the rights of PepsiCo to  
6 defend itself and its actions in law or equity shall not be abrogated or reduced in any fashion by  
7 the terms of this Section and PepsiCo shall be entitled to raise any and all applicable defenses,  
8 arising in law or equity, against Plaintiffs, except that PepsiCo shall not contest its obligation to  
9 comply with the terms of this Consent Judgment as set forth herein.

10 Without in any way limiting the Plaintiffs' rights as set forth in the preceding paragraph,  
11 Plaintiffs reserve the right to bring an action against PepsiCo for any violations of Proposition 65  
12 or the Unfair Competition Law that may result from PepsiCo's substantial and continuing failure  
13 to comply with the requirements of Section 3.

14 **10. Application of Consent Judgment.**

15 This Consent Judgment shall apply to, be binding upon, and inure to the benefit of, the  
16 Parties, their divisions, subdivisions and subsidiaries and the successors or assignees of each of  
17 them. Any change in ownership, partnership status or corporate status of PepsiCo, including, but  
18 not limited to, any transfer of assets or real or personal property, shall in no way alter PepsiCo's  
19 responsibilities under this Consent Judgment. PepsiCo shall be responsible and shall remain  
20 responsible for carrying out all activities required of it under this Consent Judgment. PepsiCo  
21 unconditionally guarantees to Plaintiffs the complete and timely performance by the Mexico  
22 Bottlers of the terms and obligations set forth in Section 3 of this Consent Judgment to the extent  
23 they are to be performed by the Mexico Bottlers.

24 **11. Claims Covered.**

25 Except as provided herein, this Consent Judgment is a final and binding resolution  
26 between Plaintiffs and PepsiCo, satisfying and releasing PepsiCo and its subsidiaries, affiliates,  
27 divisions, predecessors, successors, officers, directors, employees, and the distributors, licensees,  
28 retailers, bottlers and customers of the products, with the explicit exception of the Dr. Pepper

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1 Bottling Company of West Jefferson, North Carolina (“Defendant’s Releasees”), from any and  
2 all claims, causes of action, damages, costs, penalties or attorneys’ fees arising in or from the  
3 Notice and Complaint, based upon alleged violations of Proposition 65, the Unfair Competition  
4 Law (whether premised on unlawful, unfair, or fraudulent conduct), the Sherman Act (e.g., Cal.  
5 Health & Safety Code §§ 110398, 110620, 110625, 110630, 110760, 110765), public nuisance  
6 (e.g., Cal. Civ. Code §§ 3479, 3480), defective product, breach of express warranties and the  
7 implied warranties of merchantability and/or fitness for a particular purpose, and/or false  
8 advertising (e.g., Cal. Business & Professions Code § 17500) (collectively, the “Covered Laws”)  
9 that arise from the absence of clear and reasonable warnings, pursuant to Proposition 65, and/or  
10 the presence of lead, lead compounds, and cadmium in or on the Covered Mexico Products and  
11 the Covered U.S. Products. The Parties further agree and acknowledge that this Consent  
12 Judgment is a full, final, and binding resolution of any direct or derivative violations of  
13 Proposition 65 that have been or could have been asserted in the Complaint against PepsiCo  
14 arising out of the acts alleged in the Complaint for their alleged failure to provide clear and  
15 reasonable warnings of exposure to or identification of lead, lead compounds, and cadmium in  
16 the Covered Mexico Products and Covered U.S. Products. It is specifically understood and  
17 agreed that the Parties intend that PepsiCo’s compliance with the terms of this Consent Judgment  
18 resolves all issues and liability, now and in the future (so long as PepsiCo complies with the  
19 terms of the Consent Judgment) concerning PepsiCo and Defendant’s Releasees’ compliance  
20 with the requirements of the Covered Laws as to lead and cadmium in the Covered Mexico  
21 Products and Covered U.S. Products. Furthermore, Plaintiffs are not aware of, and have no  
22 present intention of pursuing, any similar violation of the Covered Laws, arising from the  
23 presence of or exposures to lead, lead compounds and cadmium with respect to PepsiCo or  
24 Defendant’s Releasees.

25 **12. Entire Agreement.**

26 This Consent Judgment contains the sole and entire agreement and understanding of the  
27 Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
28 negotiations, commitments and understandings related hereto. No representations, oral or

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1 otherwise, express or implied, other than those contained herein have been made by any party  
2 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
3 deemed to exist or to bind any of the Parties.

4 **13. Authorization.**

5 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the  
6 party he or she represents to enter into this Consent Judgment on behalf of the party represented  
7 and legally to bind that party.

8 **14. Modification.**

9 This Consent Judgment may be modified from time to time by express written agreement  
10 of the Parties with the approval of the Court, or by an order of this Court on noticed motion from  
11 Plaintiffs or PepsiCo in accordance with law.

12 **15. Entry of Judgment Required.**

13 This Consent Judgment shall be null and void, and be without any force or effect, unless  
14 entered by the Court in this matter. If the Consent Judgment is not entered by the Court, the  
15 execution of this Consent Judgment by PepsiCo or the People shall not be construed as an  
16 admission by PepsiCo or the People of any fact, conclusion of law, issue of law, or violation of  
17 law.

18 **16. Retention of Jurisdiction – Dispute Resolution.**

19 This Court shall retain jurisdiction over this matter and the Parties to this Consent  
20 Judgment, in order to implement all of the terms of this Consent Judgment, and to resolve  
21 disputes that may arise between Plaintiffs and PepsiCo regarding the implementation of the  
22 terms of this Consent Judgment. If PepsiCo disagrees with a decision that the Attorney General  
23 has made pursuant this Consent Judgment, the parties shall engage in good faith, informal  
24 negotiations to resolve that dispute. Should the parties be unable to resolve the issue within 90  
25 days or such other period as they shall mutually agree, they will proceed to mediation before a  
26 mutually acceptable mediator, with PepsiCo bearing such mediator's fees. In the event that the  
27 mediation fails to resolve the differences between the Parties, PepsiCo may challenge the  
28 Attorney General's decision by noticed motion to this Court, upon which PepsiCo shall bear the

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1 burden of proof. PepsiCo's motion shall provide the Court with a summary of the dispute and of  
2 the position taken by the parties, and shall reference the documents relevant to the dispute.  
3 PepsiCo shall serve its motion on the Parties and Dr. Leeman. The Attorney General, the City  
4 Attorney and Dr. Leeman may file responses to PepsiCo's motion, and they shall be allotted  
5 sufficient time to prepare an adequate response.

6 **17. Governing Law.**

7 The terms of this Consent Judgment shall be governed by the laws of the State of  
8 California and, except as otherwise provided herein, apply within the State of California.

9 **18. Notices.**

10 18.1 Plaintiffs. All correspondence to the Plaintiffs shall be mailed simultaneously to:

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

14 Patty Bilgin  
15 Office of the Los Angeles City Attorney  
16 500 City Hall East,  
200 N. Main Street  
Los Angeles, California 90012

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

20 18.2 Dr. Leeman. All correspondence to Dr. Leeman shall be sent to:

21 Whitney R. Leeman, Ph.D.  
22 c/o Clifford A. Chanler  
23 Hirst & Chanler  
24 The Whitney Building  
71 Elm Street, Suite 8  
New Canaan, CT 06840

1 18.3 PepsiCo. All correspondence to PepsiCo shall be simultaneously sent to:

2 Robert K. Biggart, Esq.  
3 General Counsel  
4 Pepsi Cola North America  
5 700 Anderson Hill Road  
6 Purchase, NY 10577-1444

Trenton H. Norris  
Bingham McCutchen LLP  
Three Embarcadero Center  
San Francisco, California 94111

Jonathan S. Jennings  
Pattishall McAuliffe Newbury Hilliard  
& Geraldson LLP  
311 South Wacker Drive, Suite 5000  
Chicago, IL 60606

8 **19. Compliance Documentation.**

9 PepsiCo shall assemble all Compliance Documentation that this Consent Judgment  
10 requires from PepsiCo and the Mexico Bottlers, and PepsiCo shall provide this documentation to  
11 Plaintiffs in an organized and accessible format. All Compliance Documentation relating to the  
12 surveys conducted pursuant to Subsection 3.1.10 or the findings of the Independent Food  
13 Processing Auditor, Independent Compliance Auditor or PepsiCo International Quality  
14 Assurance, shall be clearly and conspicuously designated by PepsiCo as confidential trade  
15 secret/business information, and its confidentiality shall be maintained by all parties who have  
16 access to such information to the extent allowed by law, except that Plaintiffs may provide such  
17 information to the Court as part of any motion to enforce or terminate this Consent Judgment.

18 **20. Counterparts and Facsimile.**

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

22  
23 **IT IS SO ORDERED, ADJUDGED AND DECREED**

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

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

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**AGREED TO:**

BILL LOCKYER,  
Attorney General  
THOMAS GREENE  
Chief Assistant Attorney General  
THEODORA BERGER  
Assistant Attorney General  
EDWARD G. WEIL  
Supervising Deputy Attorney General  
DENNIS A. RAGEN  
Deputy Attorney General

By: \_\_\_\_\_  
Deputy Attorney General

Date: \_\_\_\_\_

ROCKARD J. DELGADILLO,  
Los Angeles City Attorney  
JEFFREY B. ISAACS  
Chief, Criminal and Special Litigation Branch  
PATTY BILGIN  
Supervising Attorney, Environmental Justice Unit  
ELISE RUDEN  
Deputy City Attorney  
JAMES COLBERT III  
Supervising Attorney, Special Litigation Branch

By: \_\_\_\_\_  
Rockard J. Delgadillo  
Los Angeles City Attorney

Date: \_\_\_\_\_

**AGREED TO:**

PEPSICO, INC.

By: \_\_\_\_\_  
Robert K. Biggart  
Vice President and Deputy General Counsel

Date: \_\_\_\_\_

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**SCHEDULE OF EXHIBITS**

- A LETTER TO U.S. BOTTLERS
- B SAMPLING PROTOCOL FOR COMPLIANCE AUDIT
- C CEASE AND DESIST LETTER
- D LETTER TO PAST SELLERS
- E LEAD GMP AUDIT GUIDELINES

**EXHIBIT A: LETTER TO U.S. BOTTLERS**

[Bottler]

[Address]

Re: PepsiCo policy prohibiting lead in decorations on beverage bottles.

This letter is to confirm to you the existing PepsiCo policy that PepsiCo carbonated beverage products sold by you in glass bottles must not contain leaded ink or lead-containing decoration of any kind on the outside of the bottle. In the event that you are considering selling PepsiCo carbonated beverage products in glass bottles with applied ceramic labels, samples of these bottles must first be sent to PepsiCo for testing to ensure that they are lead free before they may be used by you.

If you have any questions regarding this requirement, please call Rebecca Haaksma at 914-742-4526.

Sincerely,



1 Upon completion of the audit at each plant, the Independent Compliance Auditor shall calculate  
2 the proportion of Lead Free Refillable Bottles in the sample drawn from the plant by dividing the  
3 number of Lead Free Refillable Bottles observed by the sample size.

4 At the time of the compliance audit, the Independent Compliance Auditor shall obtain from  
5 PepsiCo a current breakdown of production volumes by line. The Independent Compliance  
6 Auditor shall then (i) aggregate the proportion of Lead Free Refillable Bottles calculated for each  
7 plant to determine the weighted average proportion of Lead Free Refillable Bottles in the float  
8 and (ii) determine the 95% confidence interval, using the method described in Section 3, below.

9 If  $P$  falls within a value captured in the 95% confidence interval or is less than the lowest value  
10 of the confidence interval, as calculated in Section 3, below, then  $P$  shall be deemed to have been  
11 achieved.

12 The Independent Compliance Auditor may, at its discretion, repeat the sampling process should  
13 any sampling result appear abnormal.

### 14 3. Confidence Interval Calculation.

15 After completion of the sampling process, the Independent Compliance Auditor will aggregate  
16 the proportion of Lead Free Refillable Bottles of Mexico Pepsi calculated for each plant in order  
17 to calculate a 95% confidence interval. This 95% confidence interval has a 95% probability of  
18 including the actual proportion of Lead Free Refillable Bottles of Mexico Pepsi in the entire  
19 Refillable Bottle population of Mexico Pepsi.

20 The 95% confidence interval will be calculated as follows: the Independent Compliance Auditor  
21 will compute a weighted average of the proportions of Lead Free Refillable Bottles of Mexico  
22 Pepsi obtained for each bottling plant. The weighting factor will be each plant's percentage of  
23 total output for Mexico by volume during the sampling period of each compliance audit. The  
24 Independent Compliance Auditor will multiply the proportion of Lead Free Refillable Bottles of  
25 Mexico Pepsi calculated for each plant by that plant's percentage of total output in Mexico. The  
26 Independent Compliance Auditor will sum the products of the above multiplications and obtain  
27 the weighted mean of Lead Free Refillable Bottle proportions of Mexico Pepsi.

28 Next, the Independent Compliance Auditor will calculate the weighted standard of deviation of  
the weighted mean of Lead Free Refillable Bottle proportions for Mexico Pepsi. The formula  
used to calculate this weighted standard of deviation is:

$$\sigma = \sqrt{\frac{\sum_{i=1}^{N'} w_i (x_i - \bar{x}_w)^2}{\frac{(N'-1) \sum_{i=1}^{N'} w_i}{N'}}$$

1                   Where:

- 2                   •  $\sigma$  is the weighted standard of deviation of the weighted mean of Lead
- 3                   Free Refillable Bottle proportions for Mexico Pepsi.
- 4                   •  $w_i$  is the weight of each  $i^{\text{th}}$  plant, calculated as each plant's percentage
- 5                   of total output in Mexico.
- 6                   •  $x_i$  is the Lead Free Refillable Bottle proportions for the  $i^{\text{th}}$  plant.
- 7                   •  $N'$  is the number of non-zero weights, i.e. the number of bottling plants.
- 8                   •  $\bar{x}_w$  is the weighted mean of Lead Free Refillable Bottle proportions.

9                   Thus, the Independent Compliance Auditor shall compute the difference between each observed  
10                   Lead Free Refillable Bottle proportion of Mexico Pepsi and the weighted mean of Lead Free  
11                   Refillable Bottle proportions of Mexico Pepsi, square the result, and multiply by the weighting  
12                   factor. This yields a weighted squared difference, which is then summed, and multiplied by  $(n-1)/n$ ,  
13                   where  $n$  is the number of plants, multiplied by the sum of weights (which is equal to 1).  
14                   The square root of the resulting value is the weighted standard of deviation.

15                   The 95% confidence interval is then defined as the weighted mean of Lead Free Refillable Bottle  
16                   proportions of Mexico Pepsi plus or minus the standard normal multiplied by the weighted  
17                   standard deviation divided by the square root of the number of bottling plants. The formula used  
18                   to calculate this 95% confidence interval is:

$$\bar{x}_w \pm z_{\alpha/2} \times \left( \frac{\sigma}{\sqrt{N'}} \right)$$

19                   Where:

- 20                   •  $\bar{x}_w$  is the weighted mean of Lead Free Refillable Bottle proportions of
- 21                   Mexico Pepsi.
- 22                   •  $z_{\alpha/2}$  is the z-value (standard normal) corresponding to  $\alpha/2$  tail probability.  
23                    $\alpha = 5\%$ . The level of confidence  $(1 - \alpha)$  is thus 95%. The z-value  $z_{\alpha/2}$  for  
24                   a 95% confidence interval is 1.96.
- 25                   •  $\sigma$  is the weighted standard deviation of weighted mean of Lead Free
- 26                   Refillable Bottle proportions of Mexico Pepsi.
- 27                   •  $N'$  is the number of non-zero weights, i.e., the number of bottling plants
- 28                   in Mexico.

1 **EXHIBIT C: CEASE AND DESIST LETTER**

2 *TO BE TRANSLATED INTO SPANISH AS WELL*

3 [DATE]

4 [RECIPIENT'S ADDRESS]

5 **Re: Unauthorized Sale of Mexico PEPSI**

6 To Whom It May Concern:

7 We are writing on behalf of our client PepsiCo, Inc. ("PepsiCo"), regarding your  
8 company's unauthorized sale of soft drinks from Mexico bearing the PEPSI marks ("Mexico  
9 PEPSI").

10 PepsiCo sells soft drinks in the United States under its famous and federally registered  
11 marks PEPSI, PEPSI-COLA, and the red, white and blue logo ("PEPSI marks"). The labels,  
12 glass bottles, quality control measures for, and other features of Mexico PEPSI are materially  
13 different from those of authorized soft drinks sold under the PEPSI marks in the United States.

14 Your sale of Mexico PEPSI is likely to cause consumer confusion and injure our client's  
15 business reputation in violation of Federal and State Trademark laws, and U.S. Food and Drug  
16 Administration and state of California labeling regulations. 15 U.S.C. § 1114; Cal. Bus. & Prof.  
17 Code § 17200 *et seq.*; 21 C.F.R. § 101.1-101.108. In addition, the California Attorney General  
18 and the Los Angeles City Attorney take the position that your conduct also may violate  
19 California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), Cal.  
Health & Safety Code § 25249.1 *et seq.*

20 PepsiCo previously has been successful in taking action against such the importation and  
21 sale of Mexico PEPSI. *See PepsiCo, Inc. v. Reyes*, 70 F. Supp. 2d 1057, 50 U.S.P.Q.2d 1697  
22 (C.D. Cal. 1999); *PepsiCo, Inc. v. Torres*, 27 U.S.P.Q.2d 1948, 1993 U.S. Dist. Lexis 17588  
23 (C.D. Cal. 1993); *PepsiCo, Inc. v. Triunfo-Mex, Inc.*, 189 F.R.D. 431 (C.D. Cal. 1999); and  
*PepsiCo, Inc. v. Nostalgia Products Corp.*, 18 U.S.P.Q.2d 1404 (N.D. Ill. 1990).

24 Consumer expectations regarding the control and integrity of PepsiCo's products and the  
25 proper use of the PEPSI marks to avoid consumer confusion and dissatisfaction are of great  
26 concern to our client. Accordingly, we ask that you:

- 27 • immediately discontinue the unauthorized sale of Mexico PEPSI;  
28 • agree not to import or sell Mexico PEPSI in the future;

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- 1 • send any Mexico PEPSI you have in your possession to the address identified above; and
- 2 • identify from whom you purchased the Mexico PEPSI and provide us with copies of all
- 3 the purchase orders and invoices relating to the importation and purchase of this Mexico
- 4 PEPSI.

5  
6 In order to resolve this matter amicably, we must receive a response to our requests  
7 within ten (10) business days of your receipt of this letter. Please send your response to me at  
8 the address noted above. If you have any questions, please do not hesitate to contact me by  
9 telephone or e-mail.

10  
11 Very truly yours,

1 **EXHIBIT D: LETTER TO PAST SELLERS**

2 [DATE]

3  
4 *TO BE TRANSLATED INTO SPANISH AS WELL*

5 [RECIPIENT'S ADDRESS]

6 **Re: Unauthorized Sale of Mexico PEPSI**

7 To Whom It May Concern:

8 I write on behalf of my client PepsiCo, Inc. ("PepsiCo"). The California Attorney  
9 General ("AG") has instructed PepsiCo to contact companies that have sold soft drinks from  
10 Mexico bearing the PEPSI marks ("Mexico PEPSI") in an unauthorized manner at any time since  
11 [two years before effective date]. I am writing to notify you that the AG's position, which is  
12 shared by the Los Angeles City Attorney, is that the sale or distribution of Mexico PEPSI in  
13 California may be a violation of California's Safe Drinking Water and Toxic Enforcement Act of  
14 1986 ("Proposition 65"), Cal. Health & Safety Code § 25249.5 *et seq.* Proposition 65 provides a  
15 maximum civil penalty of \$2,500 per day for each violation.

16 In addition to notifying you of the AG's position with respect to the sale of Mexico  
17 PEPSI in California, I wish to remind you that PepsiCo does not authorize the importation or sale  
18 of Mexico PEPSI in the United States. The unauthorized sale of Mexico PEPSI is likely to cause  
19 consumer confusion and injure PepsiCo's business reputation in violation of Federal and State  
20 Trademark laws, and U.S. Food and Drug Administration and state of California labeling  
21 regulations. 15 U.S.C. § 1114; Cal. Bus. & Prof. Code § 17200 *et seq.*; 21 C.F.R. § 101.1-  
22 101.108.

23 The prohibition against your importation of Mexican PEPSI into the United States and  
24 against your marketing, distribution or sale of Mexican PEPSI in the United States has not  
25 changed in any manner. You are still prohibited from engaging in these activities. This letter  
26 reinforces the reasons why you are prohibited from this importation, marketing, distribution or  
27 sale and the potential penalties you may incur should you resume this conduct.

28 If you have any questions, please let me know.

Very truly yours,

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**EXHIBIT E: LEAD GMP AUDIT GUIDELINES**

This audit checklist serves as a guide to the auditor in completing a general assessment of the practices utilized to reduce the risk of lead integration.

Plant Name:	Plant Location:	Audit Company / Auditor Name:
Audit Date:	Management Plant Personnel:	

<i>Question</i>	<i>Guidelines</i>	<i>Yes</i>	<i>No</i>	<i>Comments</i>
1. <i>Are the operational requirements for refillable glass bottle washing that impact lead reduction met?</i>	<ul style="list-style-type: none"> <li>Recommended EDTA concentration met.</li> <li>Recommended pH of the prefinal rinse is met.</li> <li>Piping for water used in the final rinse is constructed of materials that do not contribute to lead integration in the refillable glass bottles.</li> </ul>			
2. <i>Have monitoring frequencies been established for checking the effectiveness of refillable glass bottle cleaning?</i>	<ul style="list-style-type: none"> <li>Frequencies established and monitoring occurring for key parameters:               <ul style="list-style-type: none"> <li>EDTA concentration of the prefinal rinse</li> <li>Water used for the final rinse of refillable glass bottles is less than 10 ppb lead and is sampled and tested every 12 months.</li> <li>pH of prefinal rinse</li> </ul> </li> </ul>			
3. <i>Are empty, cleaned refillable glass bottles protected from lead integration prior to filling?</i>	<ul style="list-style-type: none"> <li>The path between the bottle washer and filler is designed to avoid contamination of the bottles with lead-containing materials (e.g. broken glass)</li> </ul>			
4. <i>Is the design of the filling area adequate to prevent lead integration into the bottles?</i>	<ul style="list-style-type: none"> <li>Filling area separated from non-processing areas</li> <li>Minimal gaps between walls and roofs or floors</li> <li>Food contact surfaces are constructed of suitable materials that do not contribute to lead integration</li> <li>Protective shield around the filler and capper to keep glass fragments, oil, grease, dust or debris from scattering.</li> </ul>			

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5.	<i>Is the filling area for glass bottles free of any obvious sources of potential lead integration to the glass bottles?</i>	<ul style="list-style-type: none"> <li>• Treated water used for beverage preparation for final refillable glass bottles is less than 10 ppb lead and is sampled and tested every 12 months.</li> <li>• No possible contamination from fuel emission (e.g. conveyor motors)</li> <li>• Lubricants, sealants that come in contact with the beverage are suitable for food contact and do not contribute to lead integration</li> </ul>			
6.	<i>Is equipment maintenance conducted in a manner to prevent lead integration to the glass bottles?</i>	<ul style="list-style-type: none"> <li>• Repairs to food contact surfaces are made with materials suitable for food contact and do not contribute to lead integration.</li> </ul>			
7.	<i>Is the final product monitored for lead?</i>	<ul style="list-style-type: none"> <li>• Final product is sampled on a quarterly basis and tested for lead.</li> <li>• Materials specifications prohibit added lead or cadmium</li> </ul>			