

1 LEXINGTON LAW GROUP
Mark Todzo (SBN 168389)
2 Joseph Mann (SBN 207968)
503 Divisadero Street
3 San Francisco, California 94117
Telephone: (415) 913-7800
4 Facsimile: (415) 759-4112
mtodzo@lexlawgroup.com
5 jmann@lexlawgroup.com

6 Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

7 ARNOLD & PORTER LLP
8 Trenton H. Norris (SBN 164781)
trent.norris@aporter.com
9 Sarah Esmaili (SBN 206053)
sarah.esmaili@aporter.com
10 3 Embarcadero Center, 10th Floor
San Francisco, California 94111
11 Telephone: 415.471.3100
Facsimile: 415.471.3400

12 Attorneys for Defendants
13 PEPSI BEVERAGES COMPANY
AND PEPSICO, INC.

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF ALAMEDA

17 CENTER FOR ENVIRONMENTAL
18 HEALTH,

19 Plaintiff,

20 v.

21 PEPSI BEVERAGES COMPANY AND
PEPSICO, INC., and DOES 1 through 100,
22 inclusive,

23 Defendants.

CASE NO.: RG 14-711020

ASSIGNED FOR ALL PURPOSES TO:

Judge: Hon. George C. Hernandez
24 Dep't: 17

[PROPOSED] CONSENT JUDGMENT

25
26
27
28

[PROPOSED] CONSENT JUDGMENT AS TO ALL DEFENDANTS

1 **1. INTRODUCTION**

2 1.1 On February 23, 2012, Plaintiff Center for Environmental Health (“CEH”) served a
3 60-Day Notice of Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement
4 Act of 1986, California Health & Safety Code §§ 25249.5, *et seq.*) (the “Notice”) on PepsiCo, Inc.
5 and Pepsi Beverages Company (collectively, “Settling Defendant”), the California Attorney
6 General, the District Attorneys of every County in the State of California, and the City Attorneys
7 for every City in the State of California with a population greater than 750,000. The Notice alleges
8 violations of Proposition 65 with respect to the presence of 4-methylimidazole (“4-MEI”) in
9 carbonated soft drinks containing caramel coloring manufactured, distributed and/or sold by
10 Settling Defendant (the “Products”).

11 1.2 The California Office of Environmental Health Hazard Assessment listed 4-MEI
12 under Proposition 65 on January 7, 2011, with an effective date of January 7, 2012. Prior to and
13 following the effective date of the listing, Settling Defendant devoted significant technical
14 resources, and great expense, to substantially reducing the levels of 4-MEI in the Products.
15 Following receipt of the Notice, Settling Defendant and CEH engaged in discussions, and CEH
16 conducted additional testing of the Products sold in California. Both prior to and following its
17 receipt of the Notice, and continuing to this day, Settling Defendant has devoted significant
18 resources to implementing a program of research and development of technologies and methods
19 intended to reduce the levels of 4-MEI in the Products. Settling Defendant adamantly maintains
20 that it has been fully compliant with Proposition 65 at all relevant times.

21 1.3 Nonetheless, on January 23, 2014, CEH, while recognizing that Settling Defendant
22 had made significant reductions in the 4-MEI content of the Products, was not fully satisfied with
23 Settling Defendant’s reformulation efforts up to that point, filed a complaint for civil penalties and
24 injunctive relief for violations of the Safe Drinking Water and Toxic Enforcement Act of 1986,
25 Health and Safety Code section 25249.6 *et seq.*, also known as “Proposition 65” in the Superior
26 Court for the County of Alameda. 1.4. PepsiCo, Inc. and Pepsi Beverages Company are the
27 Defendants named in the Complaint. Pepsi Beverages Company is a dba for Bottling Group, LLC.
28 Both the Plaintiff and Settling Defendant shall be referred to as a “Party” to this Consent Judgment,

1 and collectively they shall be referred to herein as the “Parties” to this Consent Judgment.

2 1.4 PepsiCo, Inc. is a North Carolina corporation that employs more than ten employees,
3 and has employed more than ten employees at all times relevant to the allegations of the complaint,
4 and that manufactures, distributes and/or sells products in the State of California and has done so in
5 the past. Bottling Group, LLC dba Pepsi Beverages Company is a Delaware limited liability
6 company that employs more than ten employees, and has employed more than ten employees at all
7 times relevant to the allegations of the complaint, and that manufactures, distributes and/or sells
8 products in the State of California and has done so in the past.

9 1.5 The products covered by this Consent Judgment (hereinafter, “Covered Products”)
10 are those carbonated soft drinks containing caramel color manufactured and sold by Settling
11 Defendant or Defendant Releasees or Downstream Defendant Releasees (as defined in Paragraph
12 9.1 herein) following the Effective Date. Each flavor or variety of carbonated soft drink containing
13 caramel color shall be considered an Individual Covered Product. Group I shall mean those
14 Individual Covered Products that are not reduced calorie, while Group II shall mean those
15 Individual Covered Products that are reduced calorie.

16 1.6 For purposes of this Consent Judgment only, the Plaintiff and the Settling Defendant
17 stipulate that this Court has jurisdiction over the allegations of violations contained in CEH’s
18 Complaint and personal jurisdiction over Settling Defendant as to the acts alleged in CEH’s
19 Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to
20 enter this Consent Judgment as a full and final resolution of all claims which were or could have
21 been raised in the Complaint based on the facts alleged therein.

22 1.7 CEH and Settling Defendant enter into this Consent Judgment as a full and final
23 settlement of all claims that were raised in the Complaint, arising out of the facts or conduct alleged
24 therein, and intend for this Consent Judgment to constitute a final judgment on the merits of
25 contested issues between the Parties that will bind those in privity with either Party. Except as
26 expressly set forth herein, nothing in this Consent Judgment shall prejudice, waive or impair any
27 right, remedy, or defense that CEH and Settling Defendant may have in any other or in future legal
28 proceedings unrelated to these proceedings. However, this paragraph shall not diminish or

1 otherwise affect the obligations, responsibilities, and duties of the Parties under this Consent
2 Judgment.

3 1.8 The Effective Date of this Consent Judgment shall be the date on which the Consent
4 Judgment is entered as a judgment by the Superior Court.

5 **2. NO ADMISSIONS**

6 2.1 By executing this Consent Judgment and agreeing to provide the relief and remedies
7 specified herein, Settling Defendant does not admit (a) that it has violated, or threatened to violate
8 Proposition 65, Business & Professions Code sections 17200 *et seq.*, Business & Professions Code
9 sections 17500 *et seq.*, the California Consumers Legal Remedies Act, or any other law or legal
10 duty; or (b) that the chemical 4-MEI in the Covered Products or in other foods or beverages poses
11 any risk to human health or requires any disclosure or warning to consumers.

12 2.2 The Parties recognize that:

13 (a) 4-MEI is formed as a byproduct when certain foods, beverages, and
14 ingredients, such as the caramel color used as an ingredient in the carbonated soft drink products at
15 issue in this case, are heated or otherwise processed; and

16 (b) Levels of 4-MEI formation are due to a wide variety of factors in the raw
17 material and may vary significantly from batch to batch.

18 2.3 Settling Defendant further notes that:

19 (a) The U.S. Food & Drug Administration's current position on 4-MEI is as
20 follows: "Based on the available information, FDA has no reason to believe that there is any
21 immediate or short-term danger presented by 4-MEI at the levels expected in food from the use of
22 caramel coloring."; and

23 (b) The European Food Safety Authority (EFSA) has concluded that it has no
24 concerns about Europeans being exposed to 4-MEI from the use of caramel coloring in food.

25 **3. INJUNCTIVE RELIEF: 4-MEI SPECIFICATION AND TARGET LEVELS**

26 3.1 *Specification Levels.* On or before September 1, 2015, Settling Defendant shall
27 ensure that the specifications it provides to its supplier(s) of caramel coloring require that, in order
28 for any individual shipment to be accepted by Settling Defendant for use in Covered Products

1 shipped for sale in California on or after November 1, 2015, then the level of 4-MEI in the caramel
2 coloring must fall within a minimum and maximum range such that the midpoint of that range shall
3 be a level of 4-MEI that, taking into account the caramel color content in the formulation of each
4 Individual Covered Product, results in a 4-MEI concentration of no more than 81 parts per billion
5 for all Covered Products, measured by the weighted average pursuant to the protocol described in
6 Paragraph 3.4(d). Settling Defendant shall continue its program of research, development, and
7 implementation of technologies and methods intended to reduce the presence of 4-MEI in the
8 Covered Products shipped for sale in California.

9 3.2 *Target Level and Target Date.* Settling Defendant shall ensure that the level of 4-
10 MEI in its Covered Products shipped for sale in California on or after January 1, 2016 (the “Target
11 Date”) is no more than the level of 100 parts per billion, measured by the weighted average
12 pursuant to the protocol described in Paragraph 3.4(d) (the “Target Level”). Settling Defendant
13 shall not be considered to have achieved the Target Level if, as of the Target Date:

14 (a) The weighted average (pursuant to the protocol described in Paragraph
15 3.4(e)) of the 4-MEI in Group I of the Covered Products exceeds the Target Level; or

16 (b) The weighted average (pursuant to the protocol described in Paragraph
17 3.4(e)) of the 4-MEI in Group II of the Covered Products exceeds the Target Level; or

18 (c) The average of the 4-MEI concentration in any Individual Covered Product,
19 as determined in accordance with the protocol described in Paragraph 3.4(f), exceeds the Target
20 Level by more than 15 percent; or

21 (d) The 4-MEI concentration in any single unit of any Individual Covered
22 Product exceeds the Target Level by more than 50 percent.

23 3.3 “Shipped for sale in California” means Covered Products that Settling Defendant
24 manufactures and either directly ships into California for sale in California or sells to a distributor
25 who Settling Defendant knows will sell the Covered Products to consumers in California.

26 3.4 *Testing.*

27 (a) Testing for 4-MEI shall be performed using High-Performance Liquid
28 Chromatography coupled with Tandem Mass Spectrometry (HPLC-MS/MS). To compensate for

1 matrix effects, the test method shall use deuterated 4-MeI surrogate, solid phase extraction (SPE) to
2 isolate 4-MeI and the deuterated surrogate from the carbonated soft drink matrix, and standard
3 addition calibration. Testing may also be performed using any other testing method agreed upon by
4 the Parties to this Consent Judgment, provided that notice of any agreed upon changes to this testing
5 method shall be provided to the California Attorney General at least 10 days prior to its use for
6 purposes of this Consent Judgment. The parties agree that the test methodology described in
7 “Simultaneous Quantitation of 2-Acetyl-4-tetrahydroxybutylimidazole, 2- and 4-Methylimidazoles,
8 and 5-Hydroxymethylfurfural in Beverages by Ultrahigh-Performance Liquid Chromatography–
9 Tandem Mass Spectrometry” by Jinyuan Wang and William C. Schnute (J. Agric.Food Chem.
10 2012, 60, 917–921) is satisfactory under this Consent Judgment.

11 (b) Representative samples of each of the ten units of Individual Covered
12 Products to be tested for purposes of demonstrating compliance with the Target Level must be taken
13 daily over no less than a ten-day period from such Covered Products produced at locations that
14 supply such Covered Products to California or purchased from ten different locations spread over at
15 least five different zip codes within California (the “Sampling Methodology”).

16 (c) To comply with the Target Level, testing must establish that the weighted
17 average of the samples is at or below the Target Level with a 95% confidence level, i.e., $p < 0.05$,
18 using stratified random sampling.

19 (d) The weighted average for all Covered Products is to be calculated by the
20 following formula: Multiply the unweighted average of the 4-MEI concentration (established by
21 the Sampling Methodology) of all Individual Covered Products within a Group by that Group’s
22 fraction of total sales volume (net of returns) for both Groups to be included in the weighted
23 average of the Covered Products, and thereafter sum the two adjusted concentrations for both.

24 (e) The weighted average for a Group of Covered Products is to be calculated by
25 the following formula: Multiply the average of the 4-MEI concentration (established by the
26 Sampling Methodology) of each Individual Covered Product within a Group by that Individual
27 Covered Product’s fraction of the total sales volume (net of returns) for all Individual Covered
28 Products within the Group, and thereafter sum the adjusted concentrations for each Individual

1 Covered Product.

2 (f) The average for an Individual Covered Product is to be calculated by the
3 following formula: Sum the 4-MEI concentration (established by the Sampling Methodology) of
4 each sample of the Individual Covered Product and divide by the number of samples.

5 (g) For purposes of determining the concentration in a single unit of any
6 Individual Covered Product, the testing protocol set forth in Paragraph 3.4(a) shall be used on one
7 single-size can or bottle in a case containing 24 such units, with the remaining 23 units in such case
8 retained for no less than 60 days following communication of the test result to the opposing Party so
9 that, should a dispute arise concerning the validity of the testing, the opposing Party, on request,
10 may test up to 12 of such units at its own expense.

11 (h) For purposes of computing weighted averages, sales volume for each Group
12 and for total sales volume for the Covered Products shall be based upon the most current 52 week
13 IRI InfoScan data (in dollars, net of returns) for the Los Angeles, San Francisco/Oakland, San
14 Diego and Sacramento metropolitan areas available to Settling Defendant as of the date of
15 sampling.

16 (i) All specifications, formulations, and test results of 4-MEI concentrations,
17 including sales volumes of any or all of the Covered Products, shall be considered confidential
18 information under the Protective Order entered in this matter.

19 (j) Testing of Covered Products to demonstrate compliance with this Paragraph
20 2 shall be conducted and/or supervised by either (i) a third party under contract to and paid by
21 Settling Defendant or (ii) Settling Defendant itself under a protocol previously approved by CEH.

22 3.5 *Verification, Stipulated Penalties and Warnings.*

23 (a) Within 60 days following the Target Date, Settling Defendant shall provide
24 CEH with a verification that Settling Defendant has achieved the Target Level for the Covered
25 Products by the Target Date. If Settling Defendant has not achieved the Target Level for the
26 Covered Products by the Target Date (including any extensions provided under Paragraph 3.6), it
27 shall pay stipulated penalties as provided in Paragraph 4, and Settling Defendant shall also continue
28 testing of the Covered Products until tests demonstrate that the Target Level has been achieved for

1 the Covered Products, at which time Settling Defendant shall provide CEH with a report setting
2 forth the 4-MEI testing and calculations performed in order to show that Settling Defendant has
3 achieved the Target Level and shall have no further duty to pay stipulated penalties except as set
4 forth in Section 3.5(c)(ii) below.

5 (b) If CEH disagrees with Settling Defendant regarding whether the Target Level
6 has been achieved or, if CEH has performed testing in accordance with Section 3.4 that
7 demonstrates that Settling Defendant has violated Section 3.2, it shall provide notice of same to
8 Settling Defendant and meet and confer with Settling Defendant for a period of not less than twenty
9 (20) days (and not less than sixty (60) days should the validity of test results under Paragraph 3.2(d)
10 be in question). Following such meet and confer, CEH may apply to the Court for enforcement of
11 this Consent Judgment. Any test data used by CEH for this purpose must be performed and
12 analyzed by methods consistent with Paragraph 3.4.

13 (c) At any time within the 12 months following the Target Date or the date on
14 which Settling Defendant achieves the Target Level (whichever comes later), CEH may send a
15 letter to Settling Defendant requesting that Settling Defendant perform additional testing on the
16 Covered Products to demonstrate continuing compliance with the Target Level. Settling Defendant
17 shall than have 60 days in which to perform the testing outlined in Paragraph 3.4.

18 (i) Should Settling Defendant's additional testing demonstrate that the
19 Covered Products remain in compliance with the Target Level, Settling Defendant shall have no
20 further testing obligations pursuant to this section and CEH shall have no further right to request
21 additional testing.

22 (ii) If, however, Settling Defendant's additional testing demonstrates that
23 it is no longer in compliance with the Target Level for one or more of the Individual Covered
24 Products, Settling Defendant must comply with the provisions of Section 3.5(a) as if it had not yet
25 met the Target Level, including the payment of Stipulated Penalties. CEH shall than have the right
26 to request additional testing in accordance with this Section as though it had not yet made its
27 request.

28 3.6 *Extension of Target Date.* Settling Defendant shall endeavor in good faith, using

1 commercially and technologically reasonable efforts, to achieve the Target Level in the Covered
2 Products shipped for sale in California by the Target Date. However, at least 60 days prior to the
3 Target Date, Settling Defendant may initiate a meet and confer session with CEH regarding a
4 possible extension of the Target Date. Upon timely application to the Court prior to the passing of
5 the Target Date, and for good cause shown based on Settling Defendant's diligence and good faith
6 efforts as well as reported progress to date, this Consent Judgment shall be modified to extend the
7 Target Date by no more than two (2) months.

8 **4. STIPULATED PENALTIES AND PILP**

9 4.1 If Settling Defendant does not achieve the Target Level by the applicable Target
10 Date, including any extensions granted under Paragraph 3.6, then Settling Defendant shall within 30
11 days and until such time as it achieves the Target Level make a payment of \$250,000 every 90 days.
12 Such payment shall be apportioned between a civil penalty , a Payment In Lieu of Penalty ("PILP")
13 pursuant to Health & Safety Code § 25249.7(b) and 11 California Code of Regulations§ 3203(b).
14 The civil penalty portion of such payment shall be \$125,000 and shall be apportioned by CEH in
15 accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of
16 California's Office of Environmental Health Hazard Assessment). The civil penalty and PILP
17 check(s) shall be made payable to the Center For Environmental Health. The PILP portion of such
18 payment shall be used as described in Section 5.1(a) below.

19 4.2 If Settling Defendant does not achieve the Target Level by a date that is one year
20 beyond the applicable Target Date, including any extensions granted under Paragraph 3.6, then
21 CEH may, in its sole discretion, proceed to seek to enforce the terms of this Consent Judgment
22 pursuant to Paragraph 7, below.

23 **5. PAYMENTS**

24 5.1 Within ten (10) business days of the Effective Date, Settling Defendant shall pay the
25 total sum of \$385,000 as a settlement payment. The funds paid by Settling Defendant shall be
26 allocated as follows and delivered to counsel for CEH at the address set forth in Section 11 below:

27 (a) \$195,000 to CEH pursuant to Health & Safety Code § 25249.7(b), and
28 California Code of Regulations, Title 11, § 3203(b). CEH will use \$115,000 of such funds as PILP

1 to continue its work educating and protecting people from exposures to toxic chemicals. CEH may
2 also use a portion of such PILP funds to monitor compliance with this Consent Judgment and to
3 purchase and test Settling Defendant's products to confirm compliance. In addition, as part of its
4 Community Environmental Action and Justice Fund, CEH will use four percent (4%) of such PILP
5 funds to award grants to grassroots environmental justice groups working to educate and protect
6 people from exposures to toxic chemicals. The method of selection of such groups can be found at
7 the CEH web site at www.ceh.org/justicefund. In addition, CEH shall pay \$60,000 of the remaining
8 \$80,000 of such funds to California's Office of Environmental Health Hazard Assessment pursuant
9 to California Health & Safety Code § 25249.7(b). The payment pursuant to this Section shall be
10 made in two checks: one in the amount of \$135,000 payable to the Center For Environmental
11 Health and one in the amount of \$60,000 made payable to the California Office of Environmental
12 Health Hazard Assessment.

13 (b) \$190,000 as reimbursement of a portion of CEH's reasonable attorneys' fees
14 and costs. \$165,000 of the payment required pursuant to this Section shall be made payable to the
15 Lexington Law Group. The remaining \$25,000 of this payment shall be made payable to the Center
16 for Environmental Health.

17 **6. MODIFICATION OF CONSENT JUDGMENT**

18 6.1 *Procedure for Modification.* This Consent Judgment may be modified by written
19 agreement of CEH and Settling Defendant, after noticed motion, and upon entry of a modified
20 consent judgment by the Court thereon, or upon motion of CEH or Settling Defendant as provided
21 herein or as otherwise provided by law, and upon entry of a modified consent judgment by the
22 Court. Before filing an application with the Court for a modification to this Consent Judgment, the
23 Party seeking the modification shall meet and confer with the other Party to determine whether the
24 other Party will consent to the proposed modification. If a proposed modification is agreed upon,
25 then Settling Defendant and CEH will present the modification to the Court by means of a motion
26 for stipulated modification to the Consent Judgment. Otherwise, the Party seeking the modification
27 shall bear the burden of establishing that the modification is appropriate based on the occurrence of
28 a condition set forth in this Consent Judgment or as otherwise provided by law. Notice of motions

1 for modification of this Consent Judgment shall be provided to the California Attorney General.

2 6.2 *Third-Party Proceedings.* If CEH or the California Attorney General agrees in a
3 judicially entered consent judgment that one or more products manufactured and sold by other
4 companies that are of the same type as the Covered Products do not require a warning for 4-MEI
5 under Proposition 65 where such similar products contain 4-MEI in an amount at or above the
6 Target Level, or if a court of competent jurisdiction renders a final judgment, and the judgment
7 becomes final, that one or more products manufactured and sold by other companies that are of the
8 same type as the Covered Products do not require a warning for 4-MEI under Proposition 65 where
9 such products contain levels of 4-MEI at or above the Target Level, then Settling Defendant may
10 request that the Court modify this Consent Judgment to eliminate the stipulated penalties under
11 Paragraph 4 of this Consent Judgment and the duty to meet the Target Level under Paragraph 3 of
12 this Consent Judgment with respect to such portion (or all) of the Covered Products as is
13 appropriate pursuant to the procedure for noticed motions set forth in Section 6.1.

14 6.3 *Change in Proposition 65.* If Proposition 65 or its implementing regulations
15 (including the “safe harbor no significant risk level” for 4-MEI set forth at Cal. Code Regs., tit. 27,
16 section 25705, subdivision (c)(2)) are changed from their terms as they exist on the date of entry of
17 this Consent Judgment to establish that the levels of 4-MEI in some or all of the Covered Products
18 are permitted to be higher, then this Consent Judgment may be modified in accordance with the
19 procedure for noticed motions set forth in Section 6.1 to relieve Settling Defendant of its obligations
20 with respect to such portion of the Covered Products as is appropriate. The Parties recognize that
21 the Target Level is based on a compromise of a number of issues, and that an increase in the “safe
22 harbor no significant risk level” above the current 29 micrograms per day would not necessarily
23 entitle Settling Defendant to a modification of the terms of this Consent Judgment.

24 6.4 *Federal Preemption.* If a court of competent jurisdiction or an agency of the federal
25 government, including, but not limited to the U.S. Food and Drug Administration, states through
26 any regulation or legally binding act that federal law has preemptive effect on any of the
27 requirements of this Consent Judgment, then this Consent Judgment may be modified in accordance
28 with the procedure for noticed motions set forth in Section 6.1 to bring it into compliance with or

1 avoid conflict with federal law, but the modification shall not be granted unless this Court
2 concludes, in a final judgment or order, that such modification is necessary to bring this Consent
3 Judgment into compliance with or avoid conflict with federal law.

4 **7. ENFORCEMENT**

5 7.1 Subject to the provisions of Paragraph 3.5(b), CEH may, by motion or application
6 for an order to show cause before this Court, enforce the terms and conditions contained in this
7 Consent Judgment. In any such proceeding, CEH may seek whatever fines, costs, penalties, or
8 remedies are provided by law for failure to comply with the Consent Judgment, including without
9 limitation an order that Settling Defendant provide clear and reasonable warnings for 4-MEI in
10 some or all Covered Products if Settling Defendant is unable to achieve the Target Level.

11 **8. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

12 8.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
13 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute
14 the Consent Judgment on behalf of the Party represented and legally to bind that Party.

15 **9. CLAIMS COVERED AND RELEASES**

16 9.1 This Consent Judgment is a full, final and binding resolution between CEH on behalf
17 of itself and the public interest and Settling Defendant, and its parents, subsidiaries, affiliated
18 entities that are under common ownership, directors, officers, employees, and attorneys (“Defendant
19 Releasees”), and each entity to whom they directly or indirectly distribute or sell Covered Products,
20 including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative
21 members, licensors and licensees (“Downstream Defendant Releasees”) of any violation of
22 Proposition 65 that was or could have been asserted in the Complaint against Settling Defendant,
23 Defendant Releasees, and Downstream Defendant Releasees, based on failure to provide clear and
24 reasonable warnings of exposure to 4-MEI from the consumption of the Products that were sold by
25 Settling Defendant, Defendant Releasees or Downstream Defendant Releasees prior to the Effective
26 Date. The Parties intend that this release shall be applied to the maximum extent permitted by law.

27 9.2 This Consent Judgment is a full, final and binding resolution between CEH, in its
28 individual capacity only, and Settling Defendant, Defendant Releasees, and Downstream Defendant

1 Releasees of any violation of any statutory or common law obligation that was or could have been
2 asserted in the Complaint against Settling Defendant, Defendant Releasees, and Downstream
3 Defendant Releasees, based on failure to provide warnings of exposure to or otherwise disclose the
4 presence of 4-MEI in the Products that were sold by Settling Defendant, Defendant Releasees or
5 Downstream Defendant Releasees prior to the Target Date. The Parties intend that this release shall
6 be applied to the maximum extent permitted by law.

7 9.3 Compliance with this Consent Judgment, including the Target Levels set forth in this
8 Consent Judgment, resolves any issue now, in the past, and in the future concerning compliance by
9 Settling Defendant, Defendant Releasees and Downstream Defendant Releasees with the
10 requirements of Proposition 65 regarding the disclosure of the presence of 4-MEI in the Products.

11 **10. RETENTION OF JURISDICTION**

12 10.1 This Court shall retain jurisdiction of this matter to implement the Consent
13 Judgment.

14 **11. PROVISION OF NOTICE**

15 11.1 When any Party is entitled to receive any notice under this Consent Judgment, the
16 notice shall be sent by email and overnight delivery to the person and address set forth in this
17 Paragraph. Any Party may modify the person and address to whom the notice is to be sent by
18 sending the other Party notice by certified mail, return receipt requested. Said change shall take
19 effect for any notice mailed at least five days after the date the return receipt is signed by the Party
20 receiving the change.

21 11.2 Notices shall be sent to:

22 For CEH:

23 Mark N. Todzo
24 Lexington Law Group
25 503 Divisadero Street
26 San Francisco, CA 94117
27 mtodzo@lexlawgroup.com
28

1 For Settling Defendants:

2 Attn: General Counsel
3 PepsiCo, Inc.
4 700 Anderson Hill Rd
Purchase, New York 10577

with a copy to:

Trenton H. Norris
Arnold & Porter LLP
3 Embarcadero Center, 10th Floor
San Francisco, CA 94111
trent.norris@aporter.com

5 **12. COURT APPROVAL**

6 12.1 This Consent Judgment shall be submitted to the Court for entry by noticed motion,
7 which CEH shall file and Settling Defendant shall support. If this Consent Judgment is not
8 approved by the Court, it shall be of no force or effect.

9 **13. ENTIRE AGREEMENT**

10 13.1 This Consent Judgment contains the sole and entire agreement and understanding of
11 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
12 negotiations, commitments and understandings related hereto. No representations, oral or
13 otherwise, express or implied, other than those contained herein have been made by any Party
14 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
15 to exist or to bind any of the Parties.

16 **14. EXECUTION IN COUNTERPARTS**

17 14.1 The stipulations to this Consent Judgment may be executed in counterparts and by
18 means of facsimile or digital transmission, which taken together shall be deemed to constitute one
19 document.

20
21 IT IS SO STIPULATED:

22 Dated: Aug 19, 2015

23
24 

25 By: Charlie Pizarro, Associate Director
26 For Plaintiff, Center for Environmental Health

1 Dated: 8/18/15



2
3
4 By: David Yawman, Senior Vice President & General
5 Counsel, PepsiCo North Americas Beverages
6 For Defendant PepsiCo, Inc.

7 Dated: 8/18/15



8
9 By: David Yawman, Senior Vice President & General
10 Counsel, PepsiCo North Americas Beverages
11 For Defendant Bottling Group, LLC
12 dba Pepsi Beverages Company

13 IT IS SO ORDERED, ADJUDGED, AND DECREED:

14 Dated: _____

15
16 _____
17 Hon. George C. Hernandez
18 Judge of the Superior Court
19
20
21
22
23
24
25
26
27
28