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12 WHITNEY R. LEEMAN, PH.D.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SAN FRANCISCO

15 UNLIMITED CIVIL JURISDICTION

16 WHITNEY R. LEEMAN, PH.D.,

17 Plaintiff,

18 v.

19 EDEN FOODS, INC., *et al.*,

20 Defendants.

Case No. CGC-17-561227

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT EDEN FOODS,
INC.**

(Health & Safety Code § 25249.6 *et seq.*, and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman, Ph.D.
4 (“Leeman”), and defendant Eden Foods, Inc. (“Eden”), with Leeman and Eden each individually
5 referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Leeman is an individual residing in California who seeks to promote awareness of exposures
8 to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Eden employs ten or more individuals and is a “person in the course of doing business” for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Leeman alleges that Eden sells or distributes for sale in California packaged dried twig teas
16 containing lead, and that it does so without providing the warning required by Proposition 65. Lead
17 is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive
18 harm. Eden denies Leeman’s allegations.

19 **1.5 Covered Tea Products**

20 For purposes of this Consent Judgment, “Covered Tea Products” are defined as all dried teas
21 (including herbal and non-herbal teas) sold or distributed for sale in California by Eden, without
22 regard to whether the Covered Tea Products are sold in individual units, cases, containers, or in bulk
23 quantities, including, without limitation, the *Eden Organic Kukicha Twig Tea, UPC No. 0 24182*
24 *18120 3*, identified in Leeman’s Notice.

25 **1.6 Notice of Violation**

26 On December 28, 2016, Leeman served Eden, the California Attorney General, and all other
27 requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”). The Notice
28 alleges that Eden violated Proposition 65 by failing to warn its customers and consumers in

1 California of the health hazards associated with exposures to lead from the Covered Tea Products.
2 No public enforcer has commenced and is diligently prosecuting an action to enforce the violations
3 alleged in the Notice.

4 **1.7 Complaint**

5 On September 11, 2017, Leeman filed the instant action (“Complaint”), to enforce the alleged
6 violations that are the subject of the Notice.

7 **1.8 No Admission**

8 Eden denies the material, factual, and legal allegations made in the Notice and Complaint, and
9 maintains that all the products it has sold or distributed for sale in California, including the Covered
10 Tea Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment
11 shall be construed as an admission by Eden of any fact, finding, conclusion, issue of law, or violation
12 of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission
13 by Eden of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically
14 denied by Eden. This Section shall not, however, diminish or otherwise affect Eden’s obligations,
15 responsibilities, and duties under this Consent Judgment.

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Eden as to the allegations in the Complaint, that venue is proper in the County of
19 San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
20 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
23 the motion for approval of this Consent Judgment is granted by the Court, including the date of any
24 unopposed tentative ruling approving the settlement.

25 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

26 **2.1 Commitment to Reformulate or Warn**

27 Within 6 months from the Effective Date and continuing thereafter, Eden agrees to only
28 import for sale, manufacture for sale, or purchase for sale in or into California Covered Tea Products

1 that are either: (i) Meet the Lead Standards for dried and brewed tea established by Section 2.2; or (ii)
2 sold with clear and reasonable warnings pursuant to Section 2.3.

3 **2.2 Lead Standards for Covered Tea Products**

4 Covered Tea Products that satisfy the following “Lead Standards” are exempt from the clear
5 and reasonable warning requirements of Section 2.3. Such Covered Tea Products shall:

6 **2.2.1** yield an average infusion test result of “no reportable amount” of lead when a
7 domestic laboratory evaluates, an infusion sample of a Covered Tea product taken from a single lot or
8 batch using a validated preparation method and analyzes the sample according to an infusion sample
9 of the Product using a validated preparation method according to U.S. Environmental Protection
10 Agency (“EPA”) testing methodology 6020, or equivalent methodologies utilized by state or federal
11 agencies, using inductively coupled plasma mass spectrometry (ICP-MS). The sample shall be
12 prepared by placing one prepackaged tea bag or, for loose leaf teas, two grams of dried tea leaves, in
13 200 milliliters (mL) of boiled ultra-pure water, steeped for five minutes, then decanting a
14 representative sample of the resulting infusion for analysis. For purposes of this Section, “no
15 reportable amount” is defined as an amount of lead that does not exceed a reporting limit of 1.0
16 micrograms per liter ($\mu\text{g/L}$); or

17 **2.2.2** yield a content test result of “no reportable amount” of lead when a domestic
18 laboratory evaluates a representative sample of the dried tea Covered Tea Product using a validated
19 preparation method and analyzes the sample according to EPA testing methodology 6020 using ICP-
20 MS. In addition to these testing protocols, Eden may use equivalent methodologies utilized by state
21 or federal agencies. For purposes of this Section, “no reportable amount” is defined as an amount of
22 lead that does not exceed 0.25 milligrams per kilogram (mg/kg).

23 **2.3 Warnings**

24 Within 6 months from the Effective Date and continuing thereafter, those Covered Tea
25 Products sold, offered for sale, or distributed for sale in California by Eden that do not meet the Lead
26 Standards established by Section 2.2, above, shall be accompanied by a clear and reasonable warning,
27 in accordance with this section or Title 27 of the California Code of Regulations, Article 6, § 25600
28 et seq. The warning shall be prominently placed in relation to the Covered Tea Product with such

1 conspicuousness when compared with other words, statements, designs, or devices as to render it
2 likely to be read and understood by an ordinary individual under customary conditions of purchase or
3 use. A warning transmitted in accordance with the above that contains the following statement shall
4 be deemed clear:

5 **WARNING:** Consuming this product can expose you to lead, which is
6 known to the State of California to cause birth defects or
7 reproductive harm.

8 **2.4 Modification of Lead Standards**

9 The Lead Standards set forth in Section 2.2, above, shall not be modified unless the
10 conditions and procedures set forth in subsection 2.4.1, below, are satisfied.

11 **2.4.1 Alternative Standards Adopted by The State of California.** Eden may
12 utilize any lead reformulation standard or level for the Covered Tea Products that is, after the
13 Effective Date: (i) adopted by The State of California, either by statute or regulation; or (ii) agreed to
14 by the California Attorney General, on behalf of the People of the State of California, in a consent
15 judgment entered by a Superior Court of the State of California. In the event Eden intends to utilize a
16 reformulation standard permitted by this subsection, Eden shall provide Leeman with written notice
17 of the proposed change and the basis therefor.

18 **3. MONETARY SETTLEMENT TERMS**

19 **3.1 Civil Penalty Payment**

20 Pursuant to Health and Safety Code section 25249.7(b), and in settlement of all claims
21 referred to in the Notice, Complaint, and this Consent Judgment, Eden agrees to pay \$2,000 in civil
22 penalties. Eden's civil penalty payment will be allocated according to Health and Safety Code
23 section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California
24 Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five
25 percent (25%) of the penalty payment retained by Leeman. Eden shall issue its payment in two
26 checks for the following amounts made payable to (a) "OEHHA" in the amount of \$1,500; and (b)
27 "Whitney R. Leeman, Client Trust Account" in the amount of \$500. Leeman's counsel shall be
28 responsible for delivering OEHHA's portion of the civil penalty paid under this Consent Judgment.

1 **3.2 Reimbursement of Attorneys’ Fees and Costs**

2 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without
3 reaching terms on the fees and costs to be reimbursed to them, thereby leaving the issue to be
4 resolved after the material terms of this Consent Judgment had been settled. Shortly after the other
5 settlement terms had been finalized, the Parties negotiated the compensation due to Leeman and her
6 counsel under general contract principles and the private attorney general doctrine codified at
7 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
8 execution of this Consent Judgment, and through court approval of the same, but exclusive of fees
9 and costs on appeal, if any. Eden agrees to pay \$18,000 by a check made payable to “The Chanler
10 Group” for all fees and costs incurred investigating, bringing this matter to Eden’s attention,
11 litigating, and negotiating a settlement that provides a public benefit.

12 **3.3 Payment Timing; Payments Held in Trust**

13 All payments due under this Consent Judgment shall be held in trust until such time as the
14 Court approves the Parties’ settlement. Eden shall deliver its civil penalty and attorneys’ fee
15 reimbursement payments to its counsel within thirty (30) days of the date that this Consent Judgment
16 is fully executed by the Parties. Eden’s counsel shall provide Leeman’s counsel with written
17 confirmation following its receipt of the settlement funds. Thereafter, Eden’s counsel shall hold the
18 settlement funds in trust until, and disburse the funds to Leeman’s counsel within five (5) days after
19 the Effective Date.

20 **3.4 Payment Address**

21 All payments required by this Consent Judgment shall be delivered to:

22 The Chanler Group
23 Attn: Proposition 65 Controller
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710

27 **4. CLAIMS COVERED AND RELEASED**

28 **4.1 Leeman’s Public Release of Proposition 65 Claims**

 Leeman, acting on her own behalf and on behalf of her past and current agents,
representatives, attorneys, successors, and assignees hereby releases Eden and its parents,

1 subsidiaries, affiliated entities under common ownership, directors, officers, employees, insurers
2 and attorneys (“Releasees”), and each entity to whom Eden directly or indirectly distributes or sells
3 the Covered Tea Products including, but not limited to, Eden’s downstream distributors,
4 wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees
5 (“Downstream Releasees”), based on the alleged or actual failure to warn about exposures to lead in
6 Covered Tea Products imported, manufactured, sold, or distributed for sale by Eden before the
7 Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment
8 constitutes compliance with Proposition 65 by Eden with respect to the alleged or actual failure to
9 warn about exposures to lead in Covered Tea Products sold by Eden after the Effective Date.

10 **4.2 Leeman’s Individual Release of Claims**

11 Leeman, in her individual capacity only and *not* in her representative capacity, on her own
12 behalf and on behalf of her past and current agents, representatives, attorneys, successors, and
13 assignees, also provides a release to Eden, Releasees, and Downstream Releasees which shall be
14 effective as a full and final accord and satisfaction, as a bar to all suits, actions, and causes of action
15 in law or in equity, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities,
16 and demands of any nature, character, or kind, whether known or unknown, suspected or
17 unsuspected, arising out of alleged or actual exposures to lead in Covered Tea Products imported,
18 manufactured, sold, or distributed for sale by Eden before the Effective Date.

19 **4.3 Eden’s Release of Leeman**

20 Eden, on its own behalf, and on behalf of its past and current agents, representatives,
21 attorneys, successors, and assignees, hereby waives any and all claims against Leeman and her
22 attorneys and other representatives, for any and all actions taken or statements made by Leeman and
23 her attorneys and other representatives, whether in the course of investigating claims, seeking to
24 enforce Proposition 65 against Eden in this matter, or with respect to the Covered Tea Products.

25 **5. COURT APPROVAL**

26 This Consent Judgment is not effective until it is approved and entered by the Court, and shall
27 be null and void if it is not approved and entered by the Court within one year after it has been fully
28 executed by the Parties, or by such additional time to which the Parties may agree in writing.

1 **6. SEVERABILITY**

2 If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment, any
3 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
4 adversely affected.

5 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the state of California
7 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
8 rendered inapplicable by reason of law generally or as to the Covered Tea Products, then Eden may
9 provide written notice to Leeman of any asserted change in the law, and shall have no further
10 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
11 Covered Tea Products are so affected.

12 **8. NOTICE**

13 Unless specified herein, all correspondence and notice required by this Consent Judgment
14 shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return
15 receipt requested; or (c) a recognized overnight courier on any Party by the other at the following
16 addresses:

17 For Eden:

18 Michael Potter, President
19 Eden Foods, Inc.
20 701 Tecumseh Road
21 Clinton, MI 49236, CA 94710

21 Jaemin Chang, Esq.
22 Fox Rothschild LLP
23 345 California St., Ste. 22005
24 San Francisco, CA 94104

23 For Leeman:

24 The Chanler Group
25 Attn: Proposition 65 Coordinator
26 2560 Ninth Street
27 Parker Plaza, Suite 214
28 Berkeley, CA 94710-2565

27 Any Party may, from time to time, specify in writing to the other a change of address to which all
28 notices and other communications shall be sent.

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

5 **10. POST EXECUTION ACTIVITIES**

6 Leeman agrees to comply with the reporting form requirements referenced in Health and
7 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
8 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement,
9 which Leeman shall draft and file. In furtherance of obtaining such approval, the Parties agree to
10 mutually employ their best efforts, and those of their counsel, to support the entry of this agreement
11 as judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of
12 this Section, “best efforts” shall include, at a minimum, supporting the motion for approval,
13 responding to any opposition or objection any third-party may file, and appearing at the hearing if so
14 requested.

15 **11. MODIFICATION**

16 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
17 entry of a modified consent judgment thereon by the Court; or (ii) a successful motion or application
18 of any Party, and the entry of a modified consent judgment thereon by the Court.

19 **12. ENFORCEMENT**

20 **12.1 Future Sales of Products Alleged to Violate this Consent Judgment.**

21 In order to assert a potential violation of this Consent Judgment, Leeman shall provide written
22 notice to Eden of the alleged violation in accordance with this Section (“Notice of Breach”). The
23 Notice of Breach shall include: (a) copies of all test results conducted on a specific Covered Product
24 during the three month period for which the violation is alleged; (b) such test results must be no less
25 than three months old; (c) the test result(s) must exceed the Lead Standards set forth in Section 2.2;
26 and (d) copies of (i) purchase information for the allegedly violating Covered Tea Product(s), and (ii)
27 a digital image of the allegedly violating Covered Tea Product showing the SKU, UPC, Lot, and
28 Batch number(s), if any.

1 Eden and Leeman shall, within thirty days of Eden's receipt of the Notice of Breach, meet and
2 confer regarding the alleged violation. During this time, Leeman shall not file any motion,
3 application, action, or pleading regarding the violation(s) alleged in the Notice of Breach.

4 For the first alleged violation for which Leeman provides Eden with a Notice of Breach, Eden
5 may demonstrate compliance by providing verified results for lead testing performed on the Covered
6 Tea Product that shows the lead content measured complies with the Lead Standard(s) of Section 2.2.
7 If Eden cannot demonstrate compliance, it must pay a stipulated civil penalty of \$2,500.00 to be
8 allocated according to Section 3.1.

9 In the event that, thereafter, Leeman provides a Notice of Breach alleging a second violation
10 of the Consent Judgment by Eden, she must do so in accordance with this Section. For the second
11 alleged violation, Eden may demonstrate compliance with the Consent Judgment by providing
12 verified test result(s) obtained using the test methodologies established by subsections 2.2.1 and/or
13 2.2.2, conducted on the Covered Tea Product, and indicating that Covered Tea Product complies with
14 the Lead Standards, such a showing shall constitute compliance.

15 In the event that Eden cannot demonstrate compliance in the manner set forth above after receipt of a
16 second Notice of Breach for a Covered Tea Product, Eden shall pay a stipulated penalty of \$5,000.00
17 for the second, and any subsequent, violation(s).

18 **13. AUTHORIZATION**

19 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
20 have read, understand, and agree to all the terms and conditions contained herein.

21
22 **AGREED TO:**

AGREED TO:

23 Date: November 3, 2017

Date: _____

24
25 By: 
26 WHITNEY R. LEEMAN, PH.D.

By: _____
Michael Potter, President
EDEN FOODS, INC.

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2 confer regarding the alleged violation. During this time, Leeman shall not file any motion,
3 application, action, or pleading regarding the violation(s) alleged in the Notice of Breach.

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5 may demonstrate compliance by providing verified results for lead testing performed on the Covered
6 Tea Product that shows the lead content measured complies with the Lead Standard(s) of Section 2.2.
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10 of the Consent Judgment by Eden, she must do so in accordance with this Section. For the second
11 alleged violation, Eden may demonstrate compliance with the Consent Judgment by providing
12 verified test result(s) obtained using the test methodologies established by subsections 2.2.1 and/or
13 2.2.2, conducted on the Covered Tea Product, and indicating that Covered Tea Product complies with
14 the Lead Standards, such a showing shall constitute compliance.

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16 second Notice of Breach for a Covered Tea Product, Eden shall pay a stipulated penalty of \$5,000.00
17 for the second, and any subsequent, violation(s).

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19 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
20 have read, understand, and agree to all the terms and conditions contained herein.


21
22 **AGREED TO:**

23 Date: _____

24
25 By: _____
26 WHITNEY R. LEEMAN, PH.D.

AGREED TO:

Date: November 6, 2017

By: 
Michael Potter, President
EDEN FOODS, INC.

27
28