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LOS ANGELES SUPERIOR COURT

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

19 PEOPLE OF THE STATE OF CALIFORNIA,
 20 ex rel. **BILL LOCKYER**, Attorney General, and
ROCKARD J. DELGADILLO, Los Angeles City
 21 Attorney,
 22
 Plaintiff,
 23 v.
 24 Dr Pepper/Seven-Up, Inc., and Does 1 through
 150, inclusive,
 25
 Defendants.
 26

CASE NO. BC 363378
CONSENT JUDGMENT

Honorable James C. Chalfant
 Department 13

1 Plaintiff, the People of the State of California, ex rel. Bill Lockyer, Attorney General, and
2 Rockard J. Delgadillo, Los Angeles City Attorney (hereinafter "Plaintiff" or "Plaintiffs"); and
3 defendant, Dr Pepper/Seven-Up, Inc. ("DPSU"), enter into this Consent Judgment as follows:

4 **1. Introduction.**

5 1.1 On December 14, 2006, Plaintiffs filed their complaint (the "Complaint"),
6 captioned as *People of the State of California v. Dr Pepper/ Seven-Up, Inc., et al.*, in the Los
7 Angeles County Superior Court. Plaintiffs allege that DPSU violated the California Safe
8 Drinking Water and Toxic Enforcement Act, California Health and Safety Code sections 25249.5
9 *et seq.* ("Proposition 65") and Business and Professions Code section 17200 *et seq.* ("Unfair
10 Competition Law") by exposing California consumers to lead and cadmium, without first
11 providing clear and 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 Dr Pepper, Diet Dr Pepper, Sun Drop, Nehi, RC Cola, 7 UP, A&W
18 Root Beer, Diet Rite, Canada Dry, Crush, Welch's, Country Time
19 Lemonade, Country Time Tea, Sunkist, Wink, and Vernor's beverages
20 bottled at the independently owned Dr Pepper Bottling Company of West
21 Jefferson, North Carolina ("West Jefferson Products"), in glass bottles with
22 decorations that contain lead and cadmium.

23 Both Mexico Squirt and West Jefferson Products have been offered for sale and sold within the
24 State of California by individuals and entities other than DPSU. Plaintiffs further allege that
25 Mexico Squirt contains detectable amounts of lead and cadmium. Lead and cadmium are listed
26 under Proposition 65 as "chemical[s] known to the State of California to cause cancer and birth
27 defects or other reproductive harm."

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1 1.2 Plaintiffs filed their Complaint after commencing their own investigation,
2 examining the “Sixty-Day Notice of Violation” (the “Notice”) that Dr. Whitney R. Leeman
3 served on public enforcement agencies and DPSU, and engaging in discussions with Dr. Leeman,
4 who had undertaken significant efforts to investigate and document exposures to lead and
5 cadmium in Mexico Squirt and West Jefferson Products.

6 1.3 DPSU employs ten or more persons and is a person in the course of doing business
7 for purposes of Proposition 65.

8 1.4 Plaintiffs and DPSU have negotiated settlement of this matter based on the
9 following understanding: DPSU denies that any Mexico Squirt or West Jefferson Products have
10 exposed any consumers in California or elsewhere to dangerous amounts of lead or cadmium or
11 to levels that would require a warning under Proposition 65. DPSU also denies that any Mexico
12 Squirt or West Jefferson Products have been sold in California with the intent or consent of
13 DPSU or any of its affiliates. DPSU asserts that, in fact, (1) any West Jefferson Products sold in
14 California were transported here in violation of agreements between DPSU and/or its affiliates
15 with West Jefferson, and (2) any Mexico Squirt sold in California was transported here in
16 violation of agreements between DPSU and/or its affiliates and its Mexico Bottlers. DPSU
17 further asserts that, for many years, it has made a considerable effort and incurred significant
18 expense to prevent Mexico Squirt from being sold to consumers in California. DPSU and its
19 affiliates assert that they do not intend Mexico Squirt to be sold in California; that if such bottles
20 are sold in California it is in violation of Federal and California trademark and Federal unfair
21 competition laws, *see* 15 U.S.C. §§ 1114, and 1125(a), as well as the Unfair Competition Law,
22 and the trademark rights of DPSU and/or its affiliates, and that such products are imported into
23 the United States and distributed and sold in California without the consent, knowledge or
24 authorization of DPSU and/or its affiliates and despite extensive and long-standing efforts to stop
25 unauthorized Mexico Squirt from entering or being sold in the United States; and DPSU and its
26 affiliates further assert that any lead associated with West Jefferson Products resulted from the
27 independent acts of others, about which DPSU and its affiliates had no knowledge, intent or
28 consent.

1 1.5 For purposes of this Consent Judgment only, DPSU and Plaintiffs stipulate that:
2 (a) this Court has jurisdiction over the allegations of violations contained in the Complaint on file
3 herein and the Notice; (b) this Court has personal jurisdiction over DPSU for the purposes of
4 enforcing the terms of this Consent Judgment; (c) venue is proper in the County of Los Angeles;
5 and (d) this Court has jurisdiction to enter this Consent Judgment as a full settlement and
6 resolution of the allegations contained in the Notice and Complaint. DPSU agrees not to
7 challenge or object to entry of this Judgment by the Court unless Plaintiffs have notified DPSU in
8 writing that Plaintiffs no longer support entry of this Consent Judgment or that Plaintiffs seek to
9 modify this Judgment, in which case DPSU may, at its option, withdraw from this Consent
10 Judgment and/or pursue any remedy available under the law. DPSU agrees not to challenge this
11 Court's jurisdiction to enforce the terms of this Consent Judgment once it has been entered.

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

1 (Modification); or (b) the Court has terminated this Consent Judgment pursuant to Section 8,
2 below (Termination of Judgment for Repeated or Severe Violations).

3 **2. Definitions.**

4 For the purposes of this Consent Judgment, the following terms shall have the indicated
5 meanings:

6 2.1 "Beverage Bottle" refers to all Refillable Bottles and Non-Refillable Bottles, as
7 those terms are defined herein.

8 2.2 "Cadmium Free" shall mean Decoration (as defined below) that contains forty-
9 eight one-hundredths percent (0.48%) cadmium by weight or less, as measured either before or
10 after the Decoration is fired onto (or otherwise affixed to) the Beverage Bottle, using a sample
11 size of the materials in question measuring approximately 50-100 mg in weight and a test method
12 of sufficient sensitivity to establish a limit of quantitation of less than 600 parts per million
13 ("ppm").

14 2.3 "Compliance Documentation" shall mean the certifications and reports which
15 DPSU and the Mexico Bottlers are required to submit pursuant to the provisions of Section 3,
16 below ("Injunctive Relief").

17 2.4 "Covered Mexico Products" shall mean carbonated beverages bottled in Mexico in
18 Refillable Bottles (as defined below) under the authority of, and marketed under trademarks
19 owned or licensed by, DPSU and/or its affiliates. "Covered Mexico Products" includes the
20 beverage contained within the Refillable Bottle, as well as the bottle cap and Refillable Bottle
21 itself.

22 2.5 "Covered U.S. Products" shall mean all carbonated beverages bottled under the
23 authority of DPSU and/or its affiliates within the United States in glass bottles and marketed
24 under trademarks owned or licensed by DPSU and/or its affiliates, including, but not limited to,
25 West Jefferson Products. "Covered U.S. Products" includes the beverage contained within the
26 glass bottle, as well as the bottle cap and glass bottle itself.

27 2.6 "Decoration" shall mean the label and any other material that is painted on or
28 affixed to a Beverage Bottle.

1 2.7 The "Effective Date" of this Consent Judgment shall be 30 days after DPSU
2 receives notice of entry of this Consent Judgment.

3 2.8 "Independent Food Processing Auditor" shall mean an auditing company that
4 (a) has extensive knowledge of good manufacturing practices in the food processing industry and
5 significant experience in inspecting food processing facilities to insure compliance with good
6 manufacturing practices; (b) has provided a resume of its qualifications to the Attorney General;
7 and (c) has received the Attorney General's approval to conduct the Lead GMP Audits required
8 by Subsections 3.1.11 and 3.1.12 below. For purposes of this Consent Judgment, the following
9 auditors are deemed approved by the Attorney General as Independent Food Processing Auditors:
10 Lloyd's Register Quality Assurance, Sumner Analytical Services, the American Institute of
11 Baking International, NSF International, Silliker Laboratories, and Scientific Certification
12 Systems. DPSU retains the right to seek the Attorney General's approval of an Independent Food
13 Processing Auditor other than those listed above. If the Attorney General approves another
14 Independent Food Processing Auditor, DPSU shall not be required to retain one of the
15 Independent Food Processing Auditors named above in this Subsection 2.8.

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

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1 2.10 “Lead Free” shall mean Decoration that contains six one-hundredths percent
2 (0.06%) lead by weight or less, as measured either before or after the Decoration is fired onto (or
3 otherwise affixed to) the Beverage Bottle, using a sample size of the materials in question
4 measuring approximately 50-100 mg in weight and a test method of sufficient sensitivity to
5 establish a limit of quantitation of less than 600 ppm.

6 2.11 “Mexico Bottler” shall mean bottlers located in Mexico authorized by DPSU or its
7 affiliates to manufacture, distribute or sell Mexico Squirt other than those owned or controlled by
8 Pepsi Bottling Group and ARCA Bottling Group (Embotelladoras Arca S.A. de C.V. and Arca
9 Corporativo S.A. de C.V.). As of the date this Agreement was executed, the complete list of all
10 Mexico Bottlers is: Embotelladora Aga, S.A. de C.V.; Refresquera International, S.A. de C.V.;
11 Embotelladora Aga de Mexico, S.A. de C.V.; Embotelladora Aga del Centro, S.A. de C.V., El
12 Manantial, S.A. de C.V.; Manantiales Peñafiel, S.A. de C.V.; and Compañía Exportadora de
13 Aguas Minerales, S.A. de C.V. If DPSU or its affiliates should authorize any other bottler located
14 in Mexico to manufacture, distribute or sell Mexico Squirt other than a bottler owned and
15 controlled by Pepsi Bottling Group and ARCA Bottling Group, such bottler shall be deemed a
16 “Mexico Bottler” pursuant to this Consent Judgment. DPSU shall provide an updated list of all
17 Mexico Bottlers to the Attorney General upon request and within 90 days of any change in the list
18 of Mexico Bottlers.

19 2.12 “Mexico Squirt” shall mean the following products of DPSU or its affiliates that
20 are bottled by a Mexico Bottler: (i) Squirt; and (ii) Crush. The definition of Mexico Squirt is
21 limited to these brands of carbonated soda based upon DPSU’s representation that it is unaware of
22 any appreciable quantity of any other brands of Covered Mexico Products that have been sold to
23 consumers in California within the last two years preceding the Effective Date of this Consent
24 Judgment.

25 2.13 “Non-Refillable Bottles” shall mean the glass bottles that are explicitly marked
26 “No Returnable,” “Recyclable,” “Recyclable” or “No Refill” or are otherwise intended,
27 designated or marked to indicate that the bottles are designed to be recycled or otherwise disposed
28 of after one use.

1 2.14 “Old Decorated Bottles” shall mean Refillable Bottles of Mexico Squirt used by
2 Mexico Bottlers that bear Decoration that is not Lead Free.

3 2.15 The “Parties” are Plaintiffs, the People of the State of California, ex rel. Bill
4 Lockyer, Jr., Attorney General, and Rockard J. Delgadillo, Los Angeles City Attorney; and
5 defendant DPSU.

6 2.16 “Plaintiffs” shall mean People of the State of California, ex rel. Bill Lockyer, Jr.,
7 Attorney General, and Rockard J. Delgadillo, Los Angeles City Attorney.

8 2.17 “Refillable Bottle” shall mean the glass bottles that are explicitly marked
9 “Retornable” or “Refillable,” or are otherwise intended, designated or marked to indicate that the
10 bottles are designed to be returned to be refilled.

11 2.18 “U.S. DPSU Bottles” shall mean glass bottles with Decorations containing
12 Covered U.S. Products.

13 **3. Injunctive Relief.**

14 3.1 Lead and Cadmium Reduction Measures. The Plaintiffs agree that, once the
15 injunctive relief requirements set forth below are implemented, the lead and cadmium content in
16 Covered Mexico Products and Covered U.S. Products will result in lead and cadmium levels
17 sufficiently low that no Proposition 65 or other warnings are required. The Parties agree that the
18 Covered Mexico Products and the Covered U.S. Products shall be deemed to comply with
19 Proposition 65 and California Business and Professions Code section 17200 with respect to lead
20 and cadmium beginning immediately upon their execution of this Consent Judgment, contingent
21 upon this Judgment subsequently being entered by this Court, and continuing so long as DPSU
22 complies and remains in compliance with the requirements of Subsections 3.1.1 through 3.1.13,
23 below.

24 3.1.1 Lead Free Decorations on U.S. DPSU Bottles. Within 90 days after the
25 Effective Date, DPSU will formally remind all of its bottlers and co-
26 packers of Covered U.S. Products within the United States in a letter sent
27 by certified mail and substantially in the form attached as Exhibit A, that
28 (i) any Covered U.S. Products sold by those bottlers must be Lead Free,

1 and (ii) representative samples of any applied ceramic label bottle for
2 Covered U.S. Products proposed to be sold to consumers in the United
3 States must first be tested by DPSU to ensure that such bottle type meets
4 this requirement before it may be used by the bottler.

5 3.1.2 Lead Free Decorations on Non-Refillable Bottles. All Decoration on Non-
6 Refillable Bottles of Mexico Squirt purchased by DPSU and its affiliates or
7 the Mexico Bottlers after the Effective Date will be Lead Free.

8 3.1.3 Lead Free Decorations on Newly-made Refillable Bottles. All Decoration
9 on Refillable Bottles of Mexico Squirt purchased by DPSU and its
10 affiliates or the Mexico Bottlers after the Effective Date will be Lead Free.

11 3.1.4 Cadmium Free Decorations on Newly-made Refillable Bottles. All
12 Decoration on Beverage Bottles of Mexico Squirt purchased by DPSU and
13 its affiliates or the Mexico Bottlers on or after the third anniversary of the
14 Effective Date will be Cadmium Free.

15 3.1.5 Phase out of Old Decorated Bottles of Mexico Squirt. DPSU and its
16 affiliates shall implement the phase out of Old Decorated Bottles of
17 Mexico Squirt pursuant to the terms set out below. For purposes of
18 demonstrating compliance with this Subsection 3.1.5 and Subsections 5.1
19 and 5.2, DPSU and/or its affiliates shall conduct Compliance Audits to
20 confirm the phase out of Old Decorated Bottles. The Compliance Audits
21 shall be conducted in accordance with the protocol in Exhibit B. Before
22 each Compliance Audit is conducted, the Independent Compliance Auditor
23 and/or DPSU and/or its affiliates shall consult with the Attorney General,
24 the City Attorney and/or their designees. Within thirty days of a request
25 from the Attorney General, DPSU shall make payments, which in the
26 aggregate shall not exceed \$2,500, as directed by the Attorney General, to
27 the Attorney General, the City Attorney or their designees, as

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1 compensation for the documented cost of consultation with the Independent
2 Compliance Auditor(s).

3 (a) Interim Compliance Audit. The Interim Compliance Audit shall be
4 conducted no later than 42 months following the Effective Date, pursuant
5 to the protocol attached as Exhibit B, for the purpose of confirming that
6 Decoration on at least 30% of Refillable Bottles of Mexico Squirt are Lead
7 Free. Within 60 days after the Interim Compliance Audit, DPSU and/or its
8 affiliates shall provide the Plaintiffs with a report from the Independent
9 Compliance Auditor of its findings (the "Interim Compliance Audit
10 Report") in accordance with the protocol in Exhibit B.

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

15 (c) Report. Within 120 days of the Final Compliance Audit, DPSU shall
16 provide the Plaintiffs with a report from the Independent Compliance
17 Auditor of its findings (the "Compliance Audit Report") in accordance
18 with the protocol in Exhibit B. If the Compliance Audit Report confirms
19 that Decoration on 95% of Refillable Bottles of Mexico Squirt is Lead Free
20 as defined in Subsection 2.10, DPSU and its affiliates shall be in
21 compliance with this Subsection 3.1.5. The Parties agree that the use of the
22 95% compliance threshold does not dilute DPSU's commitment to use its
23 best efforts to employ all available means to phase out the use of Old
24 Decorated Bottles, completely, by the tenth anniversary of the Effective
25 Date. In the event that the Compliance Audit Report demonstrates DPSU
26 is not in compliance with this Subsection by the tenth anniversary of the
27 Effective Date, DPSU will: (i) be subject to the stipulated payment set
28 forth at Subsection 5.2(d), below; (ii) submit with its Compliance Audit

1 Report a plan for achieving compliance within six months after the tenth
2 anniversary of the Effective Date; and (iii) file within twelve months after
3 such tenth anniversary of the Effective Date a Supplemental Compliance
4 Audit Report demonstrating compliance. Failure to satisfy the
5 requirements in (ii) and (iii) of this subparagraph and to pay any stipulated
6 payment imposed pursuant to Subsection 5.2(d) may be grounds for a
7 motion seeking termination of the Consent Judgment pursuant to Section 8
8 with respect to DPSU.

9 3.1.6 Polymer Coating. DPSU and its affiliates may investigate the feasibility of
10 a polymer coating process or other processes to encapsulate lead and
11 cadmium on Old Decorated Bottles of Mexico Squirt. Should DPSU and
12 its affiliate determine that any such process is feasible, then before
13 implementing such process for all Refillable Bottles of Mexico Squirt,
14 DPSU will provide the Attorney General, for his review and approval,
15 technical information concerning, among other things, the composition,
16 durability, safety, efficacy and effectiveness of the process, and such other
17 information with respect to the process and its foreseeable use as the
18 Attorney General may require.

19 (a) In analyzing whether any process effectively encapsulates lead and
20 cadmium on Old Decorated Bottles or otherwise renders the lead and
21 cadmium inaccessible in a manner sufficient that the bottles may be
22 considered Lead Free and Cadmium Free, the parties shall use a modified
23 version of the NIOSH Method No. 9100 test, which shall detail the test
24 method to be used and the result (in micrograms of cadmium and lead) to
25 be achieved. DPSU or its affiliates shall submit for the Attorney General's
26 review and approval a draft of such modified NIOSH Method No. 9100
27 test in the context of carbonated beverage bottles, and the Parties shall
28 negotiate in a good faith effort to resolve any differences. Should the

1 parties be unable to resolve any remaining differences on this issue within
2 90 days or such other period as they shall mutually agree, they will
3 proceed to mediation before a mutually acceptable mediator, lasting a
4 maximum of two full days, with DPSU bearing such mediator's fees. In
5 the event that the mediation fails to resolve any differences between the
6 Parties on this issue, DPSU shall present such differences to the Court
7 for resolution on noticed motion, upon which DPSU would bear the burden
8 of proof.

9 (b) In the event that the Attorney General approves the use of a polymer
10 coating process or any other processes pursuant to this Subsection 3.1.6,
11 such approval shall not relieve DPSU of any of its obligations under
12 Section 3 of this Consent Judgment, but it shall entitle DPSU to a credit
13 against any future payment as set forth in Subsection 5.2, provided that the
14 implementation of the approved process occurs before the deadlines
15 referenced in that section.

16 3.1.7 No increase in cadmium levels. Existing cadmium levels in the Decoration
17 on Refillable Bottles of Mexico Squirt will not increase as a result of the
18 transition from the current Decoration to Lead Free Decoration.

19 3.1.8 No Decorations in lip/rim area. Effective immediately upon the date that
20 this Consent Judgment is entered as a final judgment by the Court, no
21 Beverage Bottles of Mexico Squirt will have Decoration or Lead Free
22 Decoration in the top 20 millimeters of the bottle ("Lip and Rim Area").
23 DPSU hereby certifies that it has complied with this requirement.

24 3.1.9 Lead Reduction Processes.

25 (a) Within 180 days of the Effective Date, DPSU and its affiliates will
26 implement an ethylenediaminetetraacetic acid ("EDTA") process or other
27 similar process for Refillable Bottles of Mexico Squirt produced at
28 Manantiales Peñafiel, S.A. de C.V. and Compañía Exportadora de Aguas

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Minerales, S.A. de C.V. If an EDTA process is used, such process will not leave any detectable residue of EDTA at a 500 ppb limit of detection. The Attorney General may, after meeting and conferring with DPSU and its technical consultants, request a lower detection limit than 500 ppb based on scientific evidence of its feasibility. If DPSU intends to use a process similar to an EDTA process, DPSU will first meet and confer with the Attorney General regarding such similar process. If the Attorney General and DPSU are unable to resolve any differences on these issues within 90 days or such other period as they shall mutually agree, they will proceed to mediation before a mutually acceptable mediator, lasting a maximum of one full day, with DPSU bearing such mediator's fees. In the event that the mediation fails to resolve any differences on this issue, the Parties may present such differences to the court for resolution on noticed motion. Use of the EDTA process or other similar process will continue until DPSU and the Attorney General mutually agree that its use is no longer necessary or that an alternative should be substituted.

(b) On or before the Effective Date, the Mexico Bottlers will use a maximum level of 10 ppb lead (after treatment) for ingredient water, as well as water used to rinse the Refillable Bottles.

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

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

(a) Surveillance by DPSU. DPSU shall conduct three enforcement surveys for the purpose of reducing the number of Old Decorated Bottles of Covered Mexico Products sold in California. Prior to conducting these surveys, DPSU shall consult with the Attorney General and the City Attorney for the purpose of selecting the optimal demographic areas to be surveyed. As

1 a part of the enforcement survey, DPSU, or its agents, will use its best
2 efforts to stop the illegal importation, distribution and/or sale of Old
3 Decorated Bottles of Covered Mexico Products, except those for which
4 DPSU does not have such ability (i) under applicable trademark and unfair
5 competition laws; or (ii) as a result of contractual provisions. Should
6 DPSU discover such sales as a result of these enforcement surveys, as part
7 of its aforesaid best efforts, it will, within two months after completion of
8 such survey, first send a cease and desist letter in English and Spanish
9 substantially in the form attached as Exhibit C to the retailer making such
10 sales. DPSU will conduct follow up investigations to ascertain whether the
11 sales have, in fact, stopped. Should the retailer not stop such sales after
12 receiving this letter, DPSU shall file suit seeking to obtain, inter alia, (i) a
13 permanent injunction to stop such sales; and (ii) the destruction of such
14 Old Decorated Bottles by the retailer or DPSU or its agents.

15 A. First Survey. The first enforcement survey shall be completed
16 within 120 days of the Effective Date. DPSU will inspect no fewer
17 than 100 retail outlets on its own or 300 in conjunction with
18 PepsiCo.

19 B. Subsequent Surveys. Two subsequent enforcement surveys must
20 each be completed no later than 14 months after the completion
21 date of the prior survey. In each such survey, DPSU must inspect
22 no fewer than 100 retail outlets on its own or 300 in conjunction
23 with PepsiCo.

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

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

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

16 (d) Surveillance Activities. The Attorney General and the City Attorney
17 intend to conduct future surveillance activities to determine whether the
18 following "Surveillance Products" are offered for sale in California: (i) Old
19 Decorated Bottles and/or (ii) any other bottles that are not Lead Free and
20 that bear the trademarks of DPSU or its affiliates. If surveillance by
21 Plaintiffs or their designees reveals the presence of Surveillance Products
22 for sale in California, the party conducting the surveillance will provide the
23 name and address of the retailer to DPSU at the address identified in
24 Section 19. If DPSU is informed, pursuant to this Subsection, that a
25 retailer is selling Surveillance Products, except those for which DPSU
26 does not have the ability to stop the illegal importation under applicable
27 trademark and unfair competition laws, DPSU shall provide the retailer
28 with a letter in the form of the letter attached hereto as Exhibit C within 10

1 business days of such notification. Within thirty days of request from the
2 Attorney General, DPSU shall make a one time payment, not to exceed
3 \$10,000, as directed by the Attorney General, to the Attorney General, the
4 City Attorney and/or their designees for the documented cost of
5 surveillance activities performed pursuant to this Subsection.

6 (e) Independent Food Processing Auditor - Mexico. Within 120 days of the
7 Effective Date, DPSU or its affiliates will retain one or more Independent
8 Food Processing Auditors to conduct audits of the Mexico Bottlers in
9 partnership with DPSU quality assurance personnel to ensure that the
10 Mexico Bottlers are employing good manufacturing practices so that lead
11 is not added to the Covered Mexico Products in the manufacturing process
12 (“Lead GMPs”). This audit (“Lead GMP Audit”) shall be conducted
13 according to the standards and procedures set forth in Exhibit E. Before
14 the initial Lead GMP Audits are commenced, the Independent Food
15 Processing Auditor shall consult with the Los Angeles City Attorney and
16 the Attorney General or the Attorney General’s designees regarding the
17 application of the Lead GMPs in the audit process. Within thirty days of a
18 request from the Attorney General, DPSU shall make payments, which in
19 the aggregate will not exceed \$2,500, as directed by the Attorney General,
20 to the Attorney General, the City Attorney or their designees, as
21 compensation for the documented cost of consultation with the auditing
22 team.

23 3.1.11 First Lead GMP Audit. The first Lead GMP Audit of all Mexico Bottlers
24 shall be completed by June 30, 2007. Within 30 days of completion of the
25 first Lead GMP Audit, DPSU shall provide the Attorney General with a
26 written report from the Independent Food Processing Auditor that the first
27 audits of all Mexico Bottlers have been completed and that each Mexico
28 Bottler is complying with this Consent Judgment and has achieved Lead

1 GMPs or each Mexico Bottler who has not complied has an acceptable and
2 effective corrective action plan in place.

3 3.1.12 Subsequent Lead GMP Audits. If the Independent Food Processing
4 Auditor has found, during the first Lead GMP Audit, that a Mexico Bottler
5 requires a corrective action plan for achieving Lead GMPs, the Attorney
6 General may require the presence of the Independent Food Processing
7 Auditor during the subsequent audits of such bottler until Lead GMPs have
8 been demonstrated through the audit process.

9 (a) Second Audit. No later than March 31, 2008, DPSU shall audit each of the
10 Mexico Bottlers to confirm that each bottler has implemented the Lead
11 GMPs as set forth in Exhibit E. No later than July 31, 2008, DPSU shall
12 provide the Attorney General with a report from DPSU quality assurance
13 and, if applicable, Independent Food Processing Auditor, that the second
14 audits for each Mexico Bottler have been completed and that each Mexico
15 Bottler is complying with this Consent Judgment and has achieved Lead
16 GMPs, or that each Mexico Bottler who has not complied has an
17 acceptable and effective corrective action plan in place.

18 (b) Third Audit. The third Lead GMP Audit shall be completed no later than
19 March 31, 2009. The audit shall be conducted by DPSU, except that if
20 either the Independent Food Processing Auditor or DPSU has found,
21 during the second Lead GMP Audit, that a Mexico Bottler requires a
22 corrective action plan for achieving compliance with Lead GMPs, the
23 Attorney General may require the presence of the Independent Food
24 Processing Auditor during the third audit of such bottler. No later than
25 September 1, 2009, DPSU shall provide the Attorney General with a report
26 from DPSU, and if applicable, the Independent Food Processing Auditor,
27 that (a) the third audits for each Mexico Bottler have been completed and
28 that the Mexico Bottlers are in compliance with all Lead GMPs and all

1 injunctive relief terms set forth in this Consent Judgment and (b) that the
2 applicable requirements of this Consent Judgment and the lead reduction
3 factors identified through the auditing process have been integrated into
4 DPSU quality assurance's ongoing internal auditing practices for Mexico
5 Bottlers and will be implemented as a module of each subsequent periodic
6 audit (which shall be conducted at least once every eighteen months) of the
7 Mexico Bottlers.

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

15 3.1.13 Certifications. On the schedule below, DPSU will supply Plaintiffs with
16 written certification, in a form attached as Exhibit F, that it has complied
17 with the following requirements:

18 Subsection 3.1.1: 150 days after the Effective Date

19 Subsections 3.1.2, 3.1.3, 3.1.7: 60 days after the Effective Date

20 Subsection 3.1.4: 60 days after third anniversary of the Effective Date

21 Subsection 3.1.9: 120 days after the Effective Date.

22 3.1.14 In connection with Plaintiffs' ongoing investigation of companies other
23 than DPSU and its affiliates regarding lead and cadmium in Mexican soft
24 drinks which are sold in California ("Ongoing Investigation"), DPSU, upon
25 reasonable notice, will provide Plaintiffs with information within its
26 possession, custody or control relevant to such Ongoing Investigation,
27 except to the extent that such information is privileged or otherwise
28 protected from disclosure.

1 **4. Settlement Amount.**

2 4.1 The total settlement amount shall be \$600,000 (“Settlement Amount”). Plaintiffs
3 have agreed to accept this amount based on the following factors: (i) DPSU’s prompt cooperation
4 with the Attorney General and the City Attorney in resolving this matter; (ii) DPSU’s willingness
5 to enter into settlement negotiations immediately in response to the investigations by Dr. Leeman,
6 the Attorney General and City Attorney, and (iii) DPSU’s prompt agreement to implement the
7 terms of injunctive relief set forth in this Consent Judgment. At DPSU’s request, the parties have
8 agreed not to assign a monetary value to the foregoing factors, but the parties agree that their
9 value is substantial. DPSU shall pay the settlement amount subject to the following, terms and
10 conditions:

11 4.1.1 Civil Penalty. Within thirty (30) days of the Effective Date, DPSU shall
12 pay a civil penalty of \$250,000. The payment shall be made by check
13 payable to the “Office of the Attorney General of California” and sent to:

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

17 A copy of the check and cover letter shall be sent to Dennis A. Ragen.
18 Civil penalties paid pursuant to this Judgment shall be apportioned in
19 accordance with Health and Safety Code section 25249.12(c), with 75%
20 of these funds remitted to the California Office of Environmental Health
21 Hazard Assessment, and the remaining 25% apportioned equally
22 between the Offices of the Attorney General and the Los Angeles City
23 Attorney.

24 4.1.2 Cy Pres. Within thirty (30) days of the Effective Date, DPSU shall make
25 Cy Pres payments in the aggregate amount of \$250,000 to be distributed as
26 follows:

27 (a) LA County. DPSU shall pay \$30,000 to the Los Angeles County
28 Department of Health to partially reimburse that Department for the past

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and future costs of gathering, and performing or obtaining laboratory testing of, food products imported from Mexico that may contain lead.

(b) Public Health Trust. DPSU shall pay \$120,000 to the Public Health Trust, to provide grants, subject to the selection process described below, for the following purposes:

- A. To provide funding to appropriate and qualified organizations for expenses and staff time incurred in performing surveillance activities similar in kind, but in addition to, those provided for in section 3.1.10(d) of this Consent Judgment.
- B. To provide subsidies to enable small companies that are domiciled in Mexico and that export food products to the United States to (i) retain qualified Independent Food Processing Auditors to conduct inspections of food production and processing activities; and (ii) to obtain laboratory testing of those products and/or ingredients.
- C. To fund other projects designed to eliminate lead contamination in food products imported from Mexico, including, without limitation: (i) the purchase of laboratory equipment for qualified laboratories in Mexico that agree to provide services to small food producers at reduced cost and/or for the California Department Of Health Services Food and Drug Branch; (ii) studies designed to identify practical and cost effective methods for removing lead from ingredients used in food products that are imported to the United States from Mexico, and (iii) studies of lead uptake in agricultural produce.
- D. Any process undertaken by the Public Health Trust to identify and choose the entity(ies) that will receive any grant to be awarded under this Subsection 4.1.2 (b) must be open to public scrutiny and subject to public notice and comment. Any use of funds must be

1 approved by the Attorney General. The Public Health Trust has
2 received similar cy pres grants in recent settlements of cases
3 brought by the Attorney General, the City Attorney and other
4 Plaintiffs involving Pepsi Cola products (LASC No. BC 351120)
5 and Mexican candy products, (LASC No. BC 318207). In order to
6 minimize any duplication of effort, the Public Health Trust will
7 coordinate (a) the expenditure of funds received pursuant to all
8 these settlements and (b) the activities that are funded by those
9 expenditures.

10 (c) Children's Hospital, Los Angeles. DPSU shall pay \$100,000 to the
11 Children's Hospital, Los Angeles for a project or projects involving the
12 treatment or prevention of cancer or reproductive harm.

13 (d) Attorney's Fees and compensation to Dr. Leeman. DPSU shall make the
14 payments set forth in sections 6.1 and 6.2, below.

15 **5. Additional Payment related to Phase Out of Old Decorated Bottles.**

16 DPSU shall make additional payments under the following circumstances:

17 5.1 Payment for Unsuccessful Interim Compliance Audit. DPSU shall provide the
18 Interim Compliance Audit Report required by Subsection 3.1.5(a) within 120 days of the 42-
19 month anniversary of the Effective Date. If the Interim Compliance Audit Report does not
20 confirm that the Decoration on at least 30% of the Refillable Bottles of Mexico Squirt is Lead
21 Free no later than 42 months after the Effective Date, then DPSU will make civil penalty
22 payments of \$75,000, as follows:

23 A. Payment not subject to credit: \$25,000

24 B. Payment subject to credit: \$50,000

25 5.2 Payment for Unsuccessful Phase-out of Old Decorated Bottles of Mexico Squirt.

26 (a) Within 120 days after the seventh anniversary of the Effective Date, if
27 DPSU does not provide the Compliance Audit Report confirming that the
28 Decoration on at least 95% of the Refillable Bottles of Mexico Squirt is

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Lead Free no later than seven years after the Effective Date, then DPSU shall make civil penalty payments of \$135,000, as follows:

- A. Payment not subject to credit: \$35,000
- B. Payment subject to credit: \$100,000

The Attorney General, in his discretion, may waive all or part of these payments for good cause, based on a showing by DPSU that (i) it or its affiliates has taken good faith and reasonable measures to accelerate the retirement of Old Decorated Bottles in a timely fashion; (ii) these measures have substantially succeeded in the phase out of these bottles; and (iii) the failure to meet the 95% goal was beyond the control of DPSU and/or its affiliates.

(b) Within 120 days after the eighth anniversary of the Effective Date, if DPSU does not provide the Compliance Audit Report confirming that the Decoration on at least 95% of the Refillable Bottles of Mexico Squirt is Lead Free no later than eight years after the Effective Date, then DPSU shall pay the civil penalty payments of \$200,000, as follows:

- A. Payment not subject to credit: \$50,000
- B. Payment subject to credit: \$150,000

The Attorney General, in his or her discretion, may waive all or part of these payments for good cause, based on a showing by DPSU that (i) it or its affiliates has taken good faith and reasonable measures to accelerate the retirement of Old Decorated Bottles in a timely fashion; (ii) these measures have substantially succeeded in the phase out of these bottles; and (iii) the failure to meet the 95% goal was beyond the control of DPSU and/or its affiliates.

(c) Within 120 days after the ninth anniversary of the Effective Date, if DPSU does not provide the Compliance Audit Report confirming that the Decoration on at least 95% of the Refillable Bottles of Mexico Squirt is

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Lead Free no later than nine years after the Effective Date, then DPSU shall make civil penalty payments of \$250,000, as follows:

- A. Payment not subject to credit: \$75,000
- B. Payment subject to credit: \$175,000

(d) DPSU shall provide the Compliance Audit Report within 120 days after the tenth anniversary of the Effective Date. If the Compliance Audit Report does not confirm that the Decoration on at least 95% of Refillable Bottles of Mexico Squirt is Lead-Free no later than ten years after the Effective Date, then DPSU shall make civil penalty payments of \$500,000 as follows:

- A. Payment not subject to credit: \$200,000
- B. Payment subject to credit: \$300,000

(e) Credit against penalties for purchase of Old Decorated Bottles from Mexico Bottlers other than Manantiales Peñafiel, S.A. de C.V. and Compañía Exportadora de Aguas Minerales, S.A. de C.V. DPSU will receive a credit against each of the civil penalty payment amounts set forth in Subsections 5.1, 5.2(a), 5.2(b), 5.2(c) and 5.2(d), in a total amount equal to fifty per cent (50%) of the funds that DPSU or its affiliates expend, in the year prior to the date that each such civil penalty payment amount accrues, to purchase Old Decorated Bottles from Mexico Bottlers other than those listed above in this paragraph (e). DPSU and/or its affiliates shall destroy any bottles so purchased. DPSU will consult with the Attorney General prior to any such expenditures, and will provide the Attorney General with timely and satisfactory documentation of all such expenditures.

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

2 6.1 Plaintiffs' Attorneys' Fees. Within thirty (30) days of the Effective Date, DPSU
3 shall pay the following amounts to reimburse Plaintiffs for the attorneys' fees and costs of
4 investigating, bringing and resolving this action.

5 Office of the Attorney General: \$40,000.00

6 Los Angeles City Attorney: \$40,000.00

7 6.2 Dr. Leeman's Personal Fees and Costs. Within thirty (30) days of the Effective
8 Date, DPSU shall pay \$20,000 to Dr. Leeman to reimburse her for the time and travel expense
9 that she has personally incurred with respect to this matter and its settlement. Dr. Leeman will
10 provide the Court with adequate documentation for this payment.

11 6.3 Payment to the Attorney General. Payment of the Attorney General's fees and
12 costs shall be by check payable to the Office of the California Attorney General, and shall be sent
13 to:

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

17 A copy of the check(s) and transmittal letter(s) shall be sent to Dennis A. Ragen, Deputy
18 Attorney General, 110 West A Street, Suite 1100, San Diego, CA 92101. Funds retained by the
19 Attorney General pursuant to this Subsection 6.3 shall be placed in an interest-bearing Special
20 Deposit Fund established by the Attorney General. Those funds, including any interest derived
21 therefrom, shall be used by the Attorney General, until all funds are exhausted, for the costs and
22 expenses associated with the enforcement and implementation of the Safe Drinking Water and
23 Toxic Enforcement Act of 1986 ("Proposition 65"), including investigations, enforcement
24 actions, and other litigation or activities as determined by the Attorney General to be reasonably
25 necessary to carry out his duties and authority under Proposition 65. Such funding may be used
26 for the costs of the Attorney General's investigation, filing fees and other court costs, payment to
27 expert witnesses and technical consultants, purchase of equipment, travel, purchase of written
28 materials, laboratory testing, sample collection, or any other cost associated with the Attorney

1 General's duties or authority under Proposition 65. Funding placed in the Special Deposit Fund
2 pursuant to this Subsection 6.3, and any interest derived therefrom, shall solely and exclusively
3 augment the budget of the Attorney General's Office and in no manner shall supplant or cause
4 any reduction of any portion of the Attorney General's budget.

5 6.4 Payment to the Los Angeles City Attorney. Payment of the Los Angeles City
6 Attorney's fees and costs shall be by check payable to the Los Angeles City Attorney, and shall
7 be sent to:

8 Patty Bilgin
9 Los Angeles City Attorney
10 500 City Hall East, 200 N. Main Street
11 Los Angeles, CA 90012

12 6.5 Payment to the Noticing Party. Payment to Dr. Leeman pursuant to Subsection 6.2
13 shall be by check payable to Dr. Whitney R. Leeman and shall be sent to:

14 Hirst & Chanler LLP
15 The Whitney Building
16 71 Elm Street, Suite 8
17 New Canaan, CT 06840

18 6.6 Noticing Party's Intent to File Motion To Recover Attorneys' Fees and Costs.
19 Plaintiffs contend that Dr. Leeman is entitled to an award of attorneys' fees and costs but the
20 amount of that award has not been determined. The Parties understand that Dr. Leeman intends
21 to file a motion for attorneys' fees and costs pursuant to California Civil Procedure Code section
22 1021.5. The Parties agree that the time for Dr. Leeman to file such motion is governed by
23 California Rule of Court 3.1702. If necessary in order to allow Dr. Leeman to file such a motion,
24 the parties will stipulate that Dr. Leeman may intervene in this action after entry of this Consent
25 Judgment for the sole purpose of filing a motion for attorneys' fees and costs pursuant to Section
26 1021.5, but Dr. Leeman will not be permitted to intervene in this action for any other purpose.

27 **7. Stipulated Additional Payments.**

28 DPSU shall be liable for additional payments, in an amount determined by the Attorney
General as set forth below, if the Attorney General notifies DPSU that he has determined that any
of the violations of this Consent Judgment referenced in Subsections 7.1 through 7.3, below, have

1 occurred. DPSU shall make stipulated additional payments, as set forth in Subsection 7.5, within
2 thirty days of receiving such notification from the Attorney General.

3 7.1 Compliance Documentation reflects that a Mexico Bottler has failed to timely
4 conduct or participate in a Lead GMP Audit required by Subsections 3.1.11 through 3.1.12:

5	First Occurrence by a bottler:	up to \$2,500
6	Second Occurrence by that same bottler:	up to \$10,000
7	Third Occurrence and thereafter by that 8 same bottler:	up to \$20,000

9 7.2 DPSU has failed to conduct a survey pursuant to Subsection 3.1.10 or has failed to
10 provide the Attorney General with a required report of the results of the survey.

11	First Occurrence:	up to \$10,000
12	Second Occurrence:	up to \$25,000
13	Third Occurrence:	up to \$50,000

14 7.3 DPSU has failed to timely provide the Attorney General with an item of
15 Compliance Documentation required under Section 3.1.13:

16	First Occurrence:	up to \$1,000
17	Second Occurrence:	up to \$2,500
18	Third Occurrence and thereafter:	up to \$10,000

19 7.4 The Attorney General may waive or reduce, in whole or in part, any payment
20 authorized by Subsections 7.1 through 7.3 for good cause shown.

21 7.5 Payments pursuant to this Section shall be made payable to the "Office of the
22 Attorney General" and shall be sent by check to:

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

26 7.6 Nothing in this Section 7 is intended to waive or diminish the Plaintiffs' rights to
27 enforce the terms of this Consent Judgment. The Attorney General reserves the right
28 simultaneously to (a) collect penalties pursuant to this Section 7; and (b) seek an order of this

1 Court requiring defendant to comply with the terms of this Judgment, including, without
2 limitation, the terms that give rise to stipulated payments. If there is a dispute between the Parties
3 with respect to compliance with this Consent Judgment, including as to whether the requirements
4 for imposition of a stipulated payment have been met, the Parties agree that the Los Angeles
5 County Superior Court shall have continuing jurisdiction to resolve such dispute and enforce this
6 Section of the judgment and that if the dispute cannot be resolved informally, either party shall
7 have the right to bring the matter before the Court through noticed motion.

8 **8. Termination of Judgment for Repeated or Severe Violations.**

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

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1 **9. Additional Enforcement Actions; Continuing Obligations.**

2 By entering into this Consent Judgment, the Plaintiffs do not waive any right to take
3 further enforcement actions regarding any purported violations by DPSU or any Mexico Bottler
4 that are not covered by the Complaint or this Consent Judgment. Except as expressly set forth
5 herein, nothing in this Consent Judgment shall be construed as diminishing DPSU's continuing
6 obligation to comply with Proposition 65 or the Unfair Competition Law in its future activities.
7 Without in any way limiting the foregoing, Plaintiffs may, after giving sixty days' notice to
8 DPSU, move the Court to obtain additional injunctive relief against DPSU or any Mexico Bottler
9 under this Consent Judgment to the extent that any of the following occur:

10 (a) At least 2,000 bottles of an individual brand of a Covered Mexico Product,
11 other than Mexico Squirt, is located for sale in California in Old Decorated
12 Bottles and the presence of these bottles for sale in California constitutes a
13 violation of Proposition 65 or the Unfair Competition Law, unless the
14 Mexico Bottlers of such brand have, prior to receipt of the notice required
15 by this Section, adopted the lead reduction measures described in
16 Subsections 3.1.2, 3.1.3, 3.1.4, 3.1.7, 3.1.8, and 3.1.9.

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

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

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1 (d) Laboratory analysis of Mexico Squirt bottled by DPSU or the Mexico
2 Bottlers, other than Manantiales Peñafiel, S.A. de C.V. and Compañía
3 Exportadora de Aguas Minerales, S.A. de C.V, shows the presence of lead
4 in the beverage itself, in excess of levels at which Proposition 65 warnings
5 are required, and the Attorney General concludes, after meeting and
6 conferring with DPSU, that an EDTA rinse, or other similar process, is
7 necessary to reduce such lead levels.

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

10 Without limiting any other rights reserved to the Plaintiffs in this Judgment, Plaintiffs
11 expressly reserve the following rights:

- 12 (a) the right to seek penalties and injunctive relief against any bottler that, after
13 the Effective Date of the Consent Judgment, sells Covered U.S. Products in
14 California in bottles that are not Lead Free.
- 15 (b) the right to seek penalties and injunctive relief against any independent
16 retailer or distributor that continues to sell or furnish Old Decorated Bottles
17 in California after having received written notice pursuant to this Consent
18 Judgment to cease selling or furnishing such bottles.

19 Prior to taking action pursuant to items (a) and (b), above, Plaintiffs will meet and confer with
20 DPSU and the affected bottler, retailer or distributor.

21 **10. Enforcement of Consent Judgment.**

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

1 satisfaction of any procedural requirements, including notice requirements, whatever fines, costs,
2 attorneys' fees, penalties or remedies are provided by law for failure to comply with
3 Proposition 65 or other laws. However, the rights of DPSU and its affiliates to defend themselves
4 and their actions in law or equity shall not be abrogated or reduced in any fashion by the terms of
5 this Section and DPSU and its affiliates shall be entitled to raise any and all applicable defenses,
6 arising in law or equity, against Plaintiffs, except that DPSU and its affiliates shall not contest
7 their obligation to comply with the terms of this Consent Judgment as set forth herein.

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

12 **11. Application of Consent Judgment.**

13 This Consent Judgment shall apply to, be binding upon, and inure to the benefit of, the
14 Parties, their divisions, subdivisions and subsidiaries and the successors or assignees of each of
15 them. Any change in ownership, partnership status or corporate status of DPSU, including, but
16 not limited to, any transfer of assets or real or personal property, shall in no way alter DPSU's
17 responsibilities under this Consent Judgment. DPSU shall be responsible and shall remain
18 responsible for carrying out all activities required of it under this Consent Judgment.

19 DPSU unconditionally guarantees to Plaintiffs the complete and timely performance by its
20 affiliates' company-owned Mexico Bottlers, Manantiales Peñafiel, S.A. de C.V.; and Compañía
21 Exportadora de Aguas Minerales, S.A. de C.V., of the terms and obligations set forth in Section 3
22 of this Consent Judgment to the extent they are to be performed by the Mexico Bottlers.

23 **12. Claims Covered.**

24 Except as provided herein, this Consent Judgment is a final and binding resolution
25 between Plaintiffs and DPSU, satisfying and releasing DPSU and its subsidiaries, affiliates,
26 divisions, predecessors, successors, officers, directors, employees, and the distributors, licensees,
27 retailers, bottlers, co-packers and customers of the products ("DPSU's Releasees"), with the
28 explicit exception of the following (1) the Dr Pepper Bottling Company of West Jefferson, North

1 Carolina; (2) Real Soda in Real Bottles, Ltd.; (3) Real Soda Orange County; (4) Real Soda in
2 Real Bottles San Diego; (5) Real Soda of San Francisco; (6) Mission Bay World Beat Beverages;
3 (7) Galco Old World Grocery; (8) Galco's Soda Pop Stop; (9) Fry's Electronics, Inc.;
4 (10) Fuddruckers, Inc. as to any Covered U.S. Products produced by Dr Pepper Bottling
5 Company of West Jefferson, North Carolina; (11) King Cannon, Inc. as to any Covered U.S.
6 Products produced by Dr Pepper Bottling Company of West Jefferson, North Carolina;
7 (12) Union Six Corporation as to any Covered U.S. Products produced by Dr Pepper Bottling
8 Company of West Jefferson, North Carolina; and (13) Daratel, Ltd. as to any Covered U.S.
9 Products produced by Dr Pepper Bottling Company of West Jefferson, North Carolina
10 (collectively "Non-Released Entities"), from any and all claims, causes of action, damages, costs,
11 penalties or attorneys' fees arising in or from the Notice and Complaint, based upon alleged
12 violations of Proposition 65, the Unfair Competition Law (whether premised on unlawful, unfair,
13 or fraudulent conduct), the Sherman Act (e.g., Cal. Health & Safety Code §§ 110398, 110620,
14 110625, 110630, 110760, 110765), public nuisance (e.g., Cal. Civ. Code §§ 3479, 3480),
15 defective product, breach of express warranties and the implied warranties of merchantability
16 and/or fitness for a particular purpose, and/or false advertising (e.g., Cal. Business & Professions
17 Code § 17500) (collectively, the "Covered Laws") that arise from the absence of clear and
18 reasonable warnings, pursuant to Proposition 65, and/or the presence of lead, lead compounds,
19 and cadmium in or on the Covered Mexico Products and the Covered U.S. Products now and for
20 the future. The Parties further agree and acknowledge that this Consent Judgment is a full, final,
21 and binding resolution of any direct or derivative violations of Proposition 65 that have been or
22 could have been asserted in the Complaint against DPSU arising out of the acts alleged in the
23 Complaint for their alleged failure to provide clear and reasonable warnings of exposure to or
24 identification of lead, lead compounds, and cadmium in the Covered Mexico Products and
25 Covered U.S. Products. It is specifically understood and agreed that the Parties intend that
26 DPSU's compliance with the terms of this Consent Judgment resolves all issues and liability, now
27 and in the future (so long as DPSU complies with the terms of the Consent Judgment) concerning
28 DPSU and DPSU's Releasees' compliance with the requirements of the Covered Laws as to lead

1 and cadmium in the Covered Mexico Products and Covered U.S. Products. Furthermore,
2 Plaintiffs are not aware of, and have no present intention of pursuing, any similar violation of the
3 Covered Laws arising from the presence of or exposures to lead, lead compounds and cadmium
4 with respect to DPSU or DPSU's Releasees.

5 **13. Entire Agreement.**

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

12 **14. Authorization.**

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

16 **15. Modification.**

17 This Consent Judgment may be modified from time to time by express written agreement
18 of the Parties with the approval of the Court, or by an order of this Court on noticed motion from
19 Plaintiffs or DPSU in accordance with California law.

20 **16. Entry of Judgment Required.**

21 This Consent Judgment shall be null and void, and be without any force or effect, unless
22 entered by the Court in this matter. If the Consent Judgment is not entered by the Court, the
23 execution of this Consent Judgment by DPSU or Plaintiffs shall not be construed as an admission
24 by DPSU or Plaintiffs of any fact, conclusion of law, issue of law, or violation of law.

25 **17. Retention of Jurisdiction – Dispute Resolution.**

26 This Court shall retain jurisdiction over this matter and the Parties to this Consent
27 Judgment, in order to implement all of the terms of this Consent Judgment, and to resolve
28 disputes that may arise between Plaintiffs and DPSU regarding the implementation of the terms

1 of this Consent Judgment. If DPSU disagrees with a decision that the Attorney General has made
2 relating to this Consent Judgment, the Parties shall engage in good faith, informal negotiations to
3 resolve that dispute. Should the parties be unable to resolve the issue within 90 days or such
4 other period as they shall mutually agree, they will proceed to mediation before a mutually
5 acceptable mediator, with DPSU bearing such mediator's fees. In the event that the mediation
6 fails to resolve the differences between the Parties, DPSU may challenge the Attorney General's
7 decision by noticed motion to this Court, upon which DPSU shall bear the burden of proof by a
8 preponderance of the evidence. DPSU's motion shall provide the Court with a summary of the
9 dispute and of the position taken by the parties, and shall reference the documents relevant to the
10 dispute. DPSU shall serve its motion on Plaintiffs and Dr. Leeman. The Attorney General and
11 the City Attorney may file responses to DPSU's motion, and they shall be allotted sufficient time
12 to prepare an adequate response.

13 **18. Governing Law.**

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

16 **19. Notices.**

17 19.1 Plaintiffs. All correspondence to the Plaintiffs shall be mailed simultaneously to:

18 Dennis A. Ragen
19 Deputy Attorney General
20 110 West A Street, Suite 1100
San Diego, CA 92101

21 Patty Bilgin
22 Office of the Los Angeles City Attorney
500 City Hall East,
200 N. Main Street
23 Los Angeles, California 90012

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

27
28

1 19.2 Dr. Leeman. All correspondence to Dr. Leeman shall be sent to:

2 Whitney R. Leeman, Ph.D.
3 c/o Clifford A. Chanler
4 Hirst & Chanler
5 The Whitney Building
6 71 Elm Street, Suite 8
7 New Canaan, CT 06840

6 19.3 DPSU. All correspondence to DPSU shall be simultaneously sent to:

7 Lisa Dalfonso
8 Assistant Secretary
9 Dr Pepper/Seven-Up, Inc.
10 900 King Street
11 Rye Brook, NY 10573

Norman C. Hile
Orrick, Herrington & Sutcliffe LLP
400 Capitol Mall, Suite 3000
Sacramento, CA 95814

10 **20. Compliance Documentation.**

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

20 **21. Counterparts and Facsimile.**

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

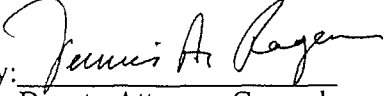
24 **IT IS SO ORDERED, ADJUDGED AND DECREED**

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Dated: 3/23/07

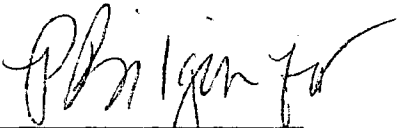
[Signature]
Judge of the Superior Court

1 **AGREED TO:**
EDMUND G. BROWN JR
2 ~~BILL LOCKYER,~~
Attorney General
3 THOMAS GREENE
Chief Assistant Attorney General
4 THEODORA BERGER
Assistant Attorney General
5 EDWARD G. WEIL
Supervising Deputy Attorney General
6 DENNIS A. RAGEN
Deputy Attorney General

7
8 By: 
Deputy Attorney General

9
10 Date: January 17, 2007
11

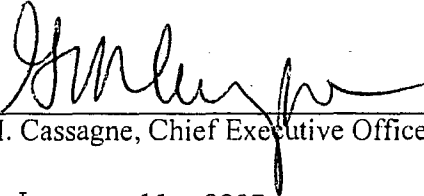
12 ROCKARD J. DELGADILLO,
Los Angeles City Attorney
13 JEFFREY B. ISAACS
Chief, Criminal and Special Litigation Branch
14 PATTY BILGIN
Supervising Attorney, Environmental Justice Unit
15 ELISE RUDEN
Deputy City Attorney

16
17
18 By: 
Rockard J. Delgadillo
19 Los Angeles City Attorney

20
21 Date: 1/17/07
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25
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AGREED TO:

DR PEPPER/SEVEN-UP, INC.

By: 
Gil M. Cassagne, Chief Executive Officer

Date: January 11, 2007

SCHEDULE OF EXHIBITS

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

1 EXHIBIT A: LETTER TO U.S. BOTTLERS AND
2 CO-PACKERS OF U.S. COVERED PRODUCT
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5 [Bottler/Co-packer]

6 [Address]
7

8 Re: Policy Prohibiting Lead And Other Heavy Metals In Decorations On Glass Bottles
9

10 This notice is being issued to remind all bottlers and co-packers of DPSU's [or insert
11 name of appropriate affiliate] requirements pertaining to the composition of applied ceramic label
12 ('ACL') decorations on glass bottles and the prohibition on the use of decorations containing
13 toxic or heavy metals. The Packaging Performance Specification document GBS10 Biological
14 Safety of All Materials provides as follows:

15 3.4 Toxic metals. All packaging materials, including labels/decoration,
16 must be manufactured to exclude heavy or toxic metals such as (but not
17 exclusively) the list below.

18 Examples of commonly regulated metals and metalloids include:

- 19 • Cadmium
20 • Hexavalent Chromium
21 • Lead
22 • Mercury
23 • Arsenic
24 • Antimony

25 Supplier must ensure that all packaging items/materials do not contain
26 heavy or toxic metals and comply with all federal, state, and local regulations with
27 regards to heavy or toxic metals.

28 It is your responsibility to ensure that you and your suppliers adhere to this requirement.

1 You are required to immediately notify DPSU of any current inventory which violates this
2 requirement and destroy the same.

3 Additionally, representative samples of any bottle with an applied ceramic label must first
4 be sent to DPSU for testing to ensure that they comply with the above-referenced heavy metals
5 policy before they may be used by you.

6 If you have any questions regarding this requirement, please call Vito Biundo at [insert].

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Sincerely,

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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
number of Lead Free Refillable Bottles observed by the sample size.

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

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

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

11 **3. Confidence Interval Calculation.**

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

15 The 95% confidence interval will be calculated as follows: the Independent Compliance Auditor
16 will compute a weighted average of the proportions of Lead Free Refillable Bottles of Mexico
Squirt obtained for each bottling plant. The weighting factor will be each plant's percentage of
17 total output for Mexico by volume during the sampling period of each compliance audit. The
Independent Compliance Auditor will multiply the proportion of Lead Free Refillable Bottles of
18 Mexico Squirt calculated for each plant by that plant's percentage of total output in Mexico. The
Independent Compliance Auditor will sum the products of the above multiplications and obtain
19 the weighted mean of Lead Free Refillable Bottle proportions of Mexico Squirt.

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

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

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- σ is the weighted standard of deviation of the weighted mean of Lead Free Refillable Bottle proportions for Mexico Squirt.
- w_i is the weight of each i^{th} plant, calculated as each plant's percentage of total output in Mexico.
- x_i is the Lead Free Refillable Bottle proportions for the i^{th} plant.
- N' is the number of non-zero weights, i.e. the number of bottling plants.
- \bar{x}_w is the weighted mean of Lead Free Refillable Bottle proportions.

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

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

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

Where:

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

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

2 *TO BE TRANSLATED INTO SPANISH AS WELL*

3
4 [DATE]

5 [RECIPIENT'S ADDRESS]

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

7 To Whom It May Concern:

8
9 I am writing on behalf of Dr Pepper/Seven-Up, Inc. ("DPSU"), regarding your company's
10 unauthorized sale of soft drinks from Mexico bearing the SQUIRT marks ("Mexico SQUIRT").

11 DPSU sells soft drinks in the United States under its famous and federally registered
12 marks. The labels, glass bottles, quality control measures for, and other features of Mexico
13 SQUIRT are materially different from those of authorized soft drinks sold under the SQUIRT
14 marks in the United States.

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

22 DPSU previously has been successful in taking action against the importation and sale of
23 Mexico SQUIRT.

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

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

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

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

Very truly yours,

1 EXHIBIT D: LETTER TO PAST SELLERS

2 [DATE]

3 TO BE TRANSLATED INTO SPANISH AS WELL

4 [RECIPIENT'S ADDRESS]

5 Re: Unauthorized Sale of Mexico SQUIRT

6 To Whom It May Concern:

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

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

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

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

28 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"> • Recommended EDTA concentration met. • Recommended pH of the prefinal rinse is met. • Piping for water used in the final rinse is constructed of materials that do not contribute to lead integration in the refillable glass bottles. 			
2.	<i>Have monitoring frequencies been established for checking the effectiveness of refillable glass bottle cleaning?</i>	<ul style="list-style-type: none"> • Frequencies established and monitoring occurring for key parameters: <ul style="list-style-type: none"> - EDTA concentration of the prefinal rinse - Water used for the final rinse of refillable glass bottles is less than 10 ppb lead and is sampled and tested every 12 months. - pH of prefinal rinse 			
3.	<i>Are empty, cleaned refillable glass bottles and fillers designed to avoid lead integration prior to filling?</i>	<ul style="list-style-type: none"> • The path between the bottle washer and the filler is designed to avoid contamination of the bottles with lead-containing materials (e.g. broken glass) 			
4.	<i>Is the design of the filling area adequate to prevent lead integration into the bottles?</i>	<ul style="list-style-type: none"> • Filling area separated from non-processing areas • Minimal gaps between walls and roofs or floors • Food contact surfaces are constructed of suitable materials that do not contribute 			

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		to lead integration			
		<ul style="list-style-type: none"> Protective shield around the filler and capper to keep glass fragments, oil, grease, dust or debris from scattering. 			
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"> 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. No possible contamination from fuel emission (e.g. conveyor motors) Lubricants, sealants that come in contact with the beverage are suitable for food contact and do not contribute to lead integration 			
6.	<i>Is equipment maintenance conducted in a manner to prevent lead integration to the glass bottles?</i>	<ul style="list-style-type: none"> Repairs to food contact surfaces are made with materials suitable for food contact and do not contribute to lead integration. 			
7.	<i>Is the final product monitored for lead?</i>	<ul style="list-style-type: none"> Final product is sampled on a quarterly basis and tested for lead. Materials specifications prohibit added lead or cadmium 			

1
2
3 **EXHIBIT F**

4 Dennis A. Ragen
5 Deputy Attorney General
6 110 West A Street, Suite 1100
7 San Diego, CA 92101

8 Patty Bilgin
9 Office of the Los Angeles City Attorney
10 500 City Hall East,
11 200 N. Main Street
12 Los Angeles, California 90012

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

18 Dear Mr. Ragen, Ms. Bilgin, and Mr. Thomas:

19 By this letter, DPSU hereby certifies compliance with Subsection ____ of the Consent Judgment
20 as of [date].

21 Any questions regarding this certification of compliance should be directed to: Norman C. Hile,
22 Orrick, Herrington & Sutcliffe LLP, 400 Capitol Mall, Suite 3000, Sacramento, CA 95814, (916)
23 329-7900.

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Sincerely,