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March 14, 2017

Via Facsimile and Certified Mail

Lauren Zeise, Ph.D.
Director
Office of Environmental Health Hazard Assessment
Director's Office
Post Office Box 4010
Sacramento, CA 95812-4010

**Re: Promulgation of Regulations Pursuant to Health and Safety Code
§110552 Determining the "Naturally Occurring" Levels of Lead in Candy
Made with Chili or Tamarind**

Dear Director Zeise:

On behalf of the Center For Environmental Health ("CEH"), I write to formally request that the Office of Environmental Health Hazard Assessment ("OEHHA") comply with its obligation to issue regulations determining the naturally occurring level of lead in candy containing chili and tamarind. OEHHA's failure to comply with the law requiring issuance of such regulations is unnecessarily exposing California residents, including children, to lead, a stunningly toxic heavy metal.

OEHHA Was Required to Issue Regulations In Compliance with Health and Safety Code §110552 In 2006:

California enacted the Unadulterated Candy Law in 2005 and the law became effective on January 1, 2006. Health and Safety Code §110552. Health and Safety Code §110552(c)(1) defines "Office" to mean OEHHA. Health and Safety Code §110552(c)(3) provides:

"Naturally occurring level" of lead in candy shall be determined by regulations adopted by the office after consultation with the department and the Attorney General. The office shall determine the naturally occurring levels of lead in candy containing chili and tamarind no later than July 1, 2006.

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The legislature provided OEHHA with six months from the date the Unadulterated Candy law become effective to issue regulations establishing the "naturally occurring level of lead in candy containing chili and tamarind." During that six month period in 2006, the law provided that the level set forth in the Consent Judgment entered into by the Attorney General was to be the interim "naturally occurring" level. Specifically, Health and Safety Code §110552(c)(3) states:

Until the office adopts regulations determining the naturally occurring level of lead, the Attorney General's written determination, if any, including any determination set forth in a consent judgment entered into by the Attorney General, of the naturally occurring level of lead in candy or in a candy ingredient shall be binding for purposes of this section.

The Consent Judgment entered into by the People through the Attorney General in the *People v. Alpro Alimento Proteínicos* matter (Los Angeles Superior Court Case No. BC318207 and related cases) does not set a "naturally occurring level" but does set a Maximum Lead Level in candy containing chili or tamarind of 100 parts per billion ("ppb"). Consent Judgment §3.16 (copy attached). The Consent Judgment goes on to state that "The Maximum Lead Level is an interim level which the Attorney general has determined shall be used for purposes of Health & Safety Code §110552(c)(3), pending promulgation of regulations of the lead level established pursuant to Health & Safety Code §110552(c)(3). *Ibid.*"

Despite the fact that the 100 ppb lead level set forth in the *People v. Alpro Alimento Proteínicos* Consent Judgment was not a "naturally occurring" lead level (it was a maximum lead level under Proposition 65) and despite the clear legislative intent that any such level be a short interim level until OEHHA could promulgate regulations, the 100 ppb level had become the *de facto* level used by the Department of Health Services ("DHS") to implement and enforce the Adulterated Candy Law. DHS not only uses the 100 ppb lead level in testing for adulterated candy but does not enforce the law for candy that tests at levels below 100 ppb.

CEH believes that were OEHHA to perform its duty and issue the regulations required by Health and Safety Code §110552 the "naturally occurring" lead level would be far below the 100 ppb level currently being used by DHS. Recent Proposition 65 settlements in cases co-litigated by CEH and the Attorney General's office have used far lower "naturally occurring" numbers for lead in other food products (ginger and molasses). Further, OEHHA's pre-regulatory proposal to set "naturally occurring" levels for food under Proposition 65 contained levels more than ten times lower than the 100 ppb lead level for foods such as vegetables, fruit, meat and seafood. For this reason, prompt issuance of the "naturally occurring" lead level regulation for Adulterated Candy

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is likely to reduce unnecessary exposures to lead, a dangerous carcinogen, reproductive toxin and neurotoxin.

Accordingly, CEH hereby demands that, within 30 days from the date of this letter, OEHHA formally commence the regulatory process to issue regulations pursuant to Health & Safety Code §110552 setting a "naturally occurring" lead level in candy containing chili and tamarind.

If OEHHA fails to meet this demand within the specified time period, CEH will pursue all available legal relief. Should you desire to discuss this matter please feel free to contact me.

Yours very truly,



Eric S. Somers