

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LEXINGTON LAW GROUP
Eric S. Somers, State Bar No. 139050
Lucas Williams, State Bar No. 264518
503 Divisadero Street
San Francisco, CA 94117
Telephone: 415.913.7800
Facsimile: 415.759.4112
esomers@lexlawgroup.com
lwilliams@lexlawgroup.com

Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

ARNOLD & PORTER LLP
Trenton H. Norris (SBN 164781)
trent.norris@aporter.com
Sarah Esmaili (SBN 206053)
sarah.esmaili@aporter.com
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024

Attorneys for Defendants

J & J SNACK FOODS SALES CORP. AND
J & J SNACK FOODS CORP. OF CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL
HEALTH, a non-profit corporation,

Plaintiff,

v.

MONDELEZ INTERNATIONAL, INC., *et*
al.,

Defendants.

Case No.: RG-13-677800

~~[PROPOSED]~~ CONSENT JUDGMENT

ENDORSED
FILED
ALAMEDA COUNTY

SEP - 8 2015

CLERK OF THE SUPERIOR COURT
By YOLANDA ESTRADA Deputy

1 **1. INTRODUCTION**

2 1.1 The Parties to this Consent Judgment are the Center For Environmental
3 Health, a California non-profit corporation (“CEH”), on the one hand, and J & J Snack Foods Sales
4 Corp. and J & J Snack Foods Corp. of California (together referred to as “Settling Defendant”), on
5 the other hand. CEH and Settling Defendant (collectively referred to as the “Parties” and
6 individually as a “Party”) enter into this Consent Judgment to settle certain claims asserted by CEH
7 against Settling Defendant as set forth in the operative complaint (“Complaint”) in the above-
8 captioned matter. This Consent Judgment covers cookies containing molasses, ginger, or both
9 molasses and ginger sold by Settling Defendant that have been or will be sold or offered for sale to
10 California consumers (“Covered Products”).

11 1.2 On February 3, 2014 CEH issued a 60-day Notice of Violation under
12 Proposition 65 to the California Attorney General, the District Attorneys of every county in
13 California, the City Attorneys of every California city with a population greater than 750,000, and
14 Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons to
15 lead and lead compounds (“Lead”) contained in Covered Products without first providing a clear
16 and reasonable Proposition 65 warning.

17 1.3 Settling Defendant is a corporation or other business entity that manufactures,
18 distributes, sells or offers for sale Covered Products that are sold or offered for sale or has done so
19 in the past.

20 1.4 On May 9, 2014, CEH added Settling Defendant to the First Amended
21 Complaint (“Complaint”) in the above-captioned matter.

22 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this
23 Court has jurisdiction over the allegations of violations contained in the Complaint and personal
24 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in
25 the County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a full
26 and final resolution of all claims which were or could have been raised in the Complaint based on
27 the facts alleged therein with respect to Covered Products manufactured, distributed, offered for sale
28 or sold by Settling Defendant.

1 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by
2 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with
3 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
4 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
5 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any other
6 pending or future legal proceedings. This Consent Judgment is the product of negotiation and
7 compromise and is accepted by the Parties solely for purposes of settling, compromising, and
8 resolving issues disputed in this Action.

9 **2. INJUNCTIVE RELIEF**

10 2.1 **Specification Compliance Date.** To the extent it has not already done so, no
11 more than thirty (30) days after the date of entry of this Consent Judgment, if Settling Defendant
12 purchases any Covered Products from a third party that is not under common ownership (a
13 “Covered Product Supplier”), it shall provide the Reformulation Level set forth in Section 2.2 to
14 each Covered Product Supplier and shall instruct each such Covered Product Supplier to provide it
15 with Covered Products that comply with the Reformulation Level set forth in Section 2.2. If in the
16 future Settling Defendant purchases Covered Products from a Covered Product Supplier that it has
17 not previously provided with instructions regarding the Reformulation Level set forth in Section
18 2.2, such Settling Defendant shall provide the Reformulation Level set forth in Section 2.2 to such
19 Covered Product Supplier prior to placing an initial order for Covered Products and instruct the
20 Covered Product Supplier to provide it with Covered Products that comply with the Reformulation
21 Level set forth in Section 2.2. Settling Defendant shall retain and make available to CEH upon
22 reasonable written request records of communications sent to and received from Covered Product
23 Suppliers that are related to the requirement of this Section 2.1 for a period of five (5) years from
24 the date of entry of this Consent Judgment (the “Effective Date”).

25 2.2 **Reformulation of Covered Products.** Settling Defendant shall not sell or
26 offer for sale a Covered Product that will be sold or offered to sale to California consumers that was
27 manufactured on or after the Effective Date (the “Reformulation Deadline”) if that Covered Product
28 contains more than thirty (30) parts per billion (“ppb”) Lead by weight (the “Reformulation Level”),

1 such concentration to be determined by use of a test performed by an accredited laboratory using
2 inductively coupled plasma mass spectrometry (ICP-MS) equipment with a level of detection of at
3 least ten (10) ppb. Upon inquiry by CEH concerning a Covered Product's best-by or sell-by (or
4 equivalent) date or other code, Settling Defendant shall promptly provide CEH with such Covered
5 Product's date of manufacture. Settling Defendant has provided CEH with shelf life expiration
6 dates for each Covered Product that it sells and Settling Defendant represents and warrants that such
7 information was true and accurate on the date provided to CEH.

8 2.3 **Testing.** Except as provided in Section 2.5, to ensure compliance with
9 Section 2.2, Settling Defendant shall conduct random testing of Covered Products and take the
10 follow-up actions described in this section ("Validation Testing"), provided however, that if Settling
11 Defendant purchases Covered Products from another Settling Defendant, only the Settling
12 Defendant that sold the Covered Products to the other Settling Defendant need perform Validation
13 Testing on those Covered Products.

14 2.3.1 Covered Products To Be Tested. Validation Testing shall be
15 performed on a quarterly basis for each "type" of Covered Product that Settling Defendant
16 manufactures or arranges to be manufactured on or after the Reformulation Deadline; such
17 Validation Testing shall be performed on samples drawn randomly from single production lots of
18 each "type" of Covered Product manufactured during that quarter. For purposes of this Consent
19 Judgment a "type" of a Covered Product is either each individual SKU of Covered Products or a
20 group of Covered Products which CEH and Settling Defendant have agreed in writing has
21 materially the same characteristics based on the type, supplier and amount of ginger or molasses
22 used in its recipe or formula.

23 2.3.2 Methods of Testing. Settling Defendant shall conduct Validation
24 Testing pursuant to one of the following methods: (1) the FDA sample preparation protocol
25 discussed in the method entitled "Elemental Analysis Manual: Section 4.4 Inductively Coupled
26 Plasma-Atomic Emission Spectrometric Determination of Elements in Food Using Microwave
27
28

1 Assisted Digestion”¹ or (2) a microwave- or heat-assisted acid digestion method employing high-
2 purity reagents. In either event, the laboratory shall digest at least 0.5 grams of each sample taken
3 from a properly homogenized random selection of a complete package of a Covered Product from a
4 particular production lot, and shall analyze each such sample without further dilution using ICP-MS
5 and with an instrument quantitation limit corresponding to less than three (3) micrograms of Lead in
6 the finished product.

7 2.3.3 Laboratories Conducting Validation Testing. Any Validation
8 Testing shall be performed by a laboratory meeting at least one of the following standards:
9 Environmental Laboratory Certification from the State of California, Department of Health
10 Services, Environmental Laboratory Accreditation Program; NSF International; American
11 Association for Laboratory Accreditation for Chemical Testing; International Standards
12 Organization/IEC via ANSI-ASQ; or an in-house laboratory or other facility experienced in testing
13 for lead levels in foods that complies with the Production and Process Control System;
14 Requirements for Laboratory Operations set forth in 21 C.F.R. Part 111, Subpart J, including but
15 not limited to the requirements for written procedures, requirements for laboratory control
16 processes, requirements for laboratory methods and examination, record retention policies, and
17 other laboratory requirements. Laboratories deemed to meet these requirements are listed on
18 Exhibit B.

19 2.3.4 Duration of Testing. In the event that the Validation Testing
20 demonstrates compliance with the Reformulation Level by Settling Defendant for six (6) continuous
21 quarters in which production of a type of Covered Product has occurred, the Settling Defendant may
22 send written notice to CEH and thereafter may cease Validation Testing for that type of Covered
23 Product; provided however, if there is a material change in the type or level of ginger or molasses
24 used in a Covered Product that is reasonably likely to affect the Lead levels in the product, then
25 Settling Defendant shall arrange for testing for a minimum of three consecutive production quarters
26 after that change.

27 _____
28 ¹ The referenced FDA test protocol may be found at
<http://www.fda.gov/Food/FoodScienceResearch/LaboratoryMethods/ucm204245.htm>.

1 2.3.5 Covered Products That Exceed Reformulation Level. If a
2 Validation Testing result indicates that a type of a Covered Product exceeds the Reformulation
3 Level, the Settling Defendant shall ensure that all Covered Products from the same production lot as
4 those from which the sample of the Covered Product(s) that exceeded the Reformulation Level were
5 drawn as well as other lots of the same type of Covered Product produced in the same calendar
6 quarter that were not directly subject to Validation Testing (the “Non-Compliant Products”) will not
7 be sold or offered for sale to California consumers.

8 2.3.5.1 Notwithstanding the foregoing, if the results of Validation
9 Testing of a sample of a type of Covered Product exceeds the Reformulation Level, the Settling
10 Defendant may collect up to three (3) more samples of the Covered Product from the same
11 production lot and have those samples tested in accordance with Section 2.3. If the results of
12 Validation Testing of all of the additional samples of a type of Covered Product collectively yield
13 an arithmetic mean of no more than thirty (30) ppb Lead by weight, Settling Defendant may treat
14 that type of Covered Product as meeting the Reformulation Level for that Validation Testing cycle
15 as long as no result for a sample exceeds fifty (50) ppb Lead. If a sample result exceeds fifty (50)
16 ppb Lead, Settling Defendant may collect three (3) more samples of the Covered Product from the
17 same production lot and have those samples tested in accordance with Section 2.3. Provided that
18 none of those additional test results exceed forty (40) ppb, those additional test results shall then be
19 used in place of the sample that exceeded fifty (50) ppb in determining whether the arithmetic mean
20 of Validation Test results for the Covered Product exceeded the Reformulation Level.

21 2.3.6 Records. The testing reports and results of the Validation Testing
22 performed pursuant to this Consent Judgment shall be retained by Settling Defendant for four (4)
23 years and made available to CEH upon reasonable request.

24 2.4 **Good Faith Commitment to Pursue Further Lead Reduction.** Except as
25 provided in Section 2.5, Settling Defendant shall continue to take, or cause to be taken, good faith
26 and commercially reasonable efforts to further reduce the Lead content of its Covered Products with
27 a goal of Covered Products having a consistent Lead content of seventeen (17) ppb or less. These
28 efforts shall include, at a minimum, efforts to further adjust recipes and formulas that will reduce

1 Lead content in Covered Products and attempts to secure Covered Product ingredients such as
2 molasses and ginger with lower Lead content. Within sixty (60) days after the Reformulation
3 Deadline and annually thereafter for two more years, Settling Defendant shall submit to CEH a
4 written report of the activities it has undertaken to effectuate its good faith commitment under this
5 paragraph. If Settling Defendant has test results demonstrating that all of its Covered Products have
6 a consistent Lead content of seventeen (17) ppb or less and it provides such documentation to CEH,
7 or if CEH and Settling Defendant otherwise agree in writing, then that Settling Defendant need not
8 submit any subsequent annual report to CEH pursuant to this paragraph.

9 2.5 **Products Not Subject to Testing.** The requirements of Sections 2.3 and 2.4
10 shall not apply to any type of Covered Product for which CEH and Settling Defendant agree in
11 writing that such sections shall not apply.

12 3. **ENFORCEMENT**

13 3.1 **General Enforcement Provisions.** CEH may, by motion or application for
14 an order to show cause before this Court, enforce the terms and conditions contained in this Consent
15 Judgment. Any action to enforce alleged violations of Section 2.2 by Settling Defendant shall be
16 brought exclusively pursuant to this Section 3, and as applicable be subject to the meet and confer
17 requirement of Section 3.2.4.

18 3.2 **Enforcement of Reformulation Commitment.**

19 3.2.1 Notice of Violation. In the event that CEH identifies a Covered
20 Product that was sold or offered for sale to California consumers with a best-by or sell-by (or
21 equivalent) date or other code that reflects that the Covered Product was manufactured on or after
22 the Effective Date (based on either the information provided to CEH by Settling Defendant or after
23 first giving Settling Defendant an opportunity to identify the manufacture date as provided in
24 Section 2.2), and for which CEH has laboratory test results showing that the Covered Product has a
25 Lead level exceeding the Reformulation Level, CEH may issue a Notice of Violation pursuant to
26 this Section. Such Notice of Violation shall be based upon a test result sufficient to establish an
27 exceedance of the Reformulation Level as it is to be evaluated under Section 2.3; the results
28 employed shall also meet the sampling, preparation, testing, and laboratory criteria specified under

1 Section 2.3. Provided however, CEH may not issue any Notice of Violation if the packaging of the
2 Covered Product is marked or labeled with the statement “Not for Sale in California” or
3 substantially similar language as long as such statement is prominently placed upon such Covered
4 Product’s label or other labeling as compared with other words or statements on the label or
5 labeling as to render it likely to be read and understood by an ordinary individual under customer
6 conditions of purchase or use. If Settling Defendant marks or labels a Covered Product with such a
7 statement, Settling Defendant shall include a letter to its retailer or distributor customer notifying
8 the customer that the Covered Product may not be sold in California.

9 3.2.2 Service of Notice of Violation and Supporting Documentation.

10 3.2.2.1 Subject to Section 3.2.1, the Notice of Violation shall be
11 sent to the person(s) identified in Exhibit A to receive notices for the Settling Defendant, and must
12 be served within 45 days of the date the Covered Products at issue were purchased or otherwise
13 acquired by CEH, provided, however, that CEH may have up to an additional 45 days to send the
14 Notice of Violation if, notwithstanding CEH’s good faith efforts, the test data required by Section
15 3.2.2.2 below cannot be obtained by CEH from its laboratory before expiration of the initial 45 day
16 period.

17 3.2.2.2 The Notice of Violation shall, at a minimum, set forth: (a)
18 the date the alleged violation was observed; (b) the location at which the Covered Products were
19 offered for sale; (c) a description of the Covered Products giving rise to the alleged violation,
20 including the name and address of the retail entity from which the sample was obtained and if
21 available information that identifies the product lot; and (d) all test data obtained by CEH regarding
22 the Covered Products and supporting documentation sufficient for validation of the test results,
23 including any laboratory reports, quality assurance reports and quality control reports associated
24 with testing of the Covered Products.

25 3.2.3 Notice of Election of Response. No more than 30 days after
26 effectuation of service of a Notice of Violation, the Settling Defendant shall provide written notice
27 to CEH whether it elects to contest the allegations contained in a Notice of Violation (“Notice of
28

1 Election”). Failure to provide a Notice of Election within 30 days of effectuation of service of a
2 Notice of Violation shall be deemed an election to contest the Notice of Violation.

3 3.2.3.1 If a Notice of Violation is contested, the Notice of Election
4 shall include all then-available documentary evidence regarding the alleged violation, including all
5 test data, if any. If the Settling Defendant or CEH later acquires additional test or other data
6 regarding the alleged violation, it shall notify the other party and promptly provide all such data or
7 information to the party. Any test data used to contest a Notice of Violation shall meet the criteria
8 of Section 2.3.

9 3.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and
10 the Settling Defendant shall meet and confer to attempt to resolve their dispute. Within 30 days of
11 serving a Notice of Election contesting a Notice of Violation, and if no enforcement action or
12 application has been filed by CEH pursuant to Section 3.1, the Settling Defendant may withdraw the
13 original Notice of Election contesting the violation and serve a new Notice of Election to not
14 contest the violation, provided, however, that, in this circumstance, the Settling Defendant shall pay
15 \$2,500 in addition to any payment required under this Consent Judgment. At any time, CEH may
16 withdraw a Notice of Violation, in which case for purposes of this Section 3.2 the result shall be as
17 if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of
18 Violation results within 30 days of a Notice of Election to contest, CEH may file an enforcement
19 motion or application pursuant to Section 3.1. In any such proceeding, CEH may seek whatever
20 fines, costs, penalties, attorneys’ fees or other remedies are provided by law for failure to comply
21 with the Consent Judgment.

22 3.2.5 Non-Contested Matters. If the Settling Defendant elects not to
23 contest the allegations in a Notice of Violation, it shall identify on a confidential basis to CEH (by
24 proper name, address of principal place of business and telephone number) the person or entity that
25 sold the Covered Products to the Settling Defendant and the manufacturer and other entities in the
26 upstream chain of distribution of the Covered Product, provided that such information is reasonably
27 available. In addition, the Settling Defendant shall undertake corrective action and make payments,
28 if any, as set forth below.

1 3.2.5.1 If the test data provided by CEH in support of the Notice of
2 Violation shows that Lead content in a Covered Product is above the Reformulation Level but less
3 than sixty (60) ppb, then the Settling Defendant shall take the following corrective action and make
4 the following payments, if any:

5 (a) The Settling Defendant shall include in its Notice of
6 Election a detailed description with supporting documentation of the corrective action that it has
7 undertaken or proposes to undertake to address the alleged violation. Any such correction shall, at a
8 minimum, provide reasonable assurance that the Settling Defendant has stopped selling or offering
9 for sale in California all Covered Products from the same lot as that of the Covered Products
10 identified in CEH's Notice of Violation. The Settling Defendant shall make available to CEH for
11 inspection and/or copying records and correspondence regarding the corrective action. If there is a
12 dispute over the corrective action, the Settling Defendant and CEH shall meet and confer pursuant
13 to Section 3.2.4 before seeking any remedy in court. In no case shall CEH issue more than one
14 NOV per manufacturing lot of a type of Covered Product.

15 (b) If the Notice of Violation is the first Notice of
16 Violation received by Settling Defendant under Section 3.2.5.1 that was not successfully contested
17 or withdrawn, no payment shall be required by that Settling Defendant. If the Notice of Violation is
18 the second, third or fourth Notice of Violation received by Settling Defendant under Section 3.2.5.1
19 that was not successfully contested or withdrawn, that Settling Defendant shall pay \$5,000 for each
20 Notice of Violation. If Settling Defendant has received more than four Notices of Violation under
21 Section 3.2.5.1 that were not successfully contested or withdrawn, that Settling Defendant shall pay
22 \$10,000 for each subsequent Notice of Violation. If Settling Defendant produces with its Notice of
23 Election test data from the manufacturer or supplier of the Covered Product that: (i) was conducted
24 prior to the date CEH purchased the Covered Product that is the subject of the Notice of Violation;
25 (ii) was conducted on the same Covered Product from the same production lot as the Covered
26 Product that is the subject of the Notice of Violation; and (iii) demonstrates Lead levels below the
27 Reformulation Level as evaluated under Section 2.3, then any payment under this Section shall be
28 reduced by fifty percent.

1 Covered Product; and (iii) demonstrates Lead levels below the Reformulation Level as evaluated
2 under Section 2.3.4, then any payment under this Section shall be reduced by fifty percent.

3 3.2.6 Payments. Any payments under Section 3.2 shall be made by check
4 payable to the “Lexington Law Group” and shall be paid within 30 days of service of a Notice of
5 Election triggering a payment and which shall be used as reimbursement for costs for investigating,
6 preparing, sending and prosecuting Notices of Violation, and to reimburse attorneys’ fees and costs
7 incurred in connection with these activities.

8 3.3 **Repeat Violations**. If Settling Defendant has received four or more Notices
9 of Violation concerning the same type of Covered Product that were not successfully contested or
10 withdrawn in any twelve (12) month period then, at CEH’s option, CEH may seek whatever fines,
11 costs, penalties, attorneys’ fees or other remedies that are provided by law for failure to comply
12 with the Consent Judgment. Prior to seeking such relief, CEH shall meet and confer with the
13 Settling Defendant for at least 30 days to determine if the Settling Defendant and CEH can agree on
14 measures that the Settling Defendant can undertake to prevent future violations.

15 **4. PAYMENTS**

16 4.1 **Payments by Settling Defendant**. Within five (5) days of the entry of this
17 Consent Judgment, Settling Defendant shall pay amounts specified on Exhibit A for that Settling
18 Defendant.

19 4.2 **Allocation of Payments**. The total settlement amount for Settling Defendant
20 shall be paid in four separate checks and delivered as set forth below. Any failure by Settling
21 Defendant to comply with the payment terms herein shall, at CEH’s discretion, be subject to a
22 stipulated late fee in the amount of \$100 for each day after the delivery date the payment is
23 received. The late fees required under this Section shall be recoverable, together with reasonable
24 attorneys’ fees, in an enforcement proceeding brought pursuant to Section 3 of this Consent
25 Judgment. The funds paid by Settling Defendant shall be allocated as set forth on Exhibit A for
26 Settling Defendant between the following categories and made payable as follows:

27 4.2.1 A civil penalty pursuant to Health & Safety Code § 25249.7(b).
28 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §

1 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
2 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment
3 shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486.

4 This payment shall be delivered as follows:

5 For United States Postal Service Delivery:

6 Attn: Mike Gyurics
7 Fiscal Operations Branch Chief
8 Office of Environmental Health Hazard Assessment
9 P.O. Box 4010, MS #19B
10 Sacramento, CA 95812-4010

11 For Non-United States Postal Service Delivery:

12 Attn: Mike Gyurics
13 Fiscal Operations Branch Chief
14 Office of Environmental Health Hazard Assessment
15 1001 I Street, MS #19B
16 Sacramento, CA 95814

17 The CEH portion of the civil penalty payment shall be made payable to the Center For
18 Environmental Health and associated with taxpayer identification number 94-3251981. This
19 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
20 94117.

21 4.2.2 A payment in lieu of civil penalty to CEH pursuant to Health &
22 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH shall use
23 such funds to continue its work educating and protecting people from exposures to toxic chemicals,
24 including heavy metals. In addition, as part of its Community Environmental Action and Justice
25 Fund, CEH will use four (4) percent of such funds to award grants to grassroots environmental
26 justice groups working to educate and protect people from exposures to toxic chemicals. The
27 method of selection of such groups can be found at the CEH web site at www.ceh.org/justicefund.
28 The payment pursuant to this Section shall be made payable to the Center For Environmental Health
and associated with taxpayer identification number 94-3251981.

4.2.3 A reimbursement of a portion of CEH's reasonable attorneys' fees
and costs. The attorneys' fees and cost reimbursement check shall be made payable to the
Lexington Law Group and associated with taxpayer identification number 94-3317175. This

1 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
2 94117.

3 4.3 **Joint and Several But Singular Obligation.** Any payment required to
4 be made by Settling Defendant under Section 3 or Section 4 of this Consent Judgment, shall be a
5 joint and several but singular obligation of J & J Snack Foods Sales Corp. and J & J Snack Foods
6 Corp. of California, such that any payment need only be paid once, whether from J & J Snack Foods
7 Sales Corp., J & J Snack Foods Corp. of California, or by both companies contributing a share of
8 each payment.

9 **5. MODIFICATION AND DISPUTE RESOLUTION**

10 5.1 **Modification.** This Consent Judgment may be modified from time to time
11 by express written agreement of the Parties, with the approval of the Court, or by an order of this
12 Court upon motion and in accordance with law.

13 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent
14 Judgment shall attempt in good faith to meet and confer with all affected Parties prior to filing a
15 motion to modify the Consent Judgment.

16 **6. CLAIMS COVERED AND RELEASE**

17 6.1 This Consent Judgment is a full, final and binding resolution between CEH
18 on behalf of itself and the public interest and Settling Defendant and Settling Defendant's parents,
19 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
20 agents, shareholders, successors, assigns, and attorneys ("Defendant Releasees"), and all entities to
21 which Settling Defendant directly or indirectly distributes or sells Covered Products, including but
22 not limited to distributors, wholesalers, customers, retailers, franchisees, licensors and licensees
23 ("Downstream Defendant Releasees"), of any violation of Proposition 65 based on failure to warn
24 about alleged exposure to Lead contained in Covered Products that were sold, distributed or offered
25 for sale by Settling Defendant prior to the Effective Date.

26 6.2 CEH, for itself, its agents, successors and assigns, releases, waives, and
27 forever discharges any and all claims against Settling Defendant, Defendant Releasees, and
28 Downstream Defendant Releasees arising from any violation of Proposition 65 or any other

1 statutory or common law claims that have been or could have been asserted by CEH individually or
2 in the public interest regarding the failure to warn about exposure to Lead arising in connection with
3 Covered Products manufactured by or for Settling Defendant prior to the Reformulation Deadline.

4 6.3 Compliance with the terms of this Consent Judgment by Settling Defendant
5 shall constitute compliance with Proposition 65 by such Settling Defendant, its Defendant Releasees
6 and its Downstream Defendant Releasees with respect to any alleged failure to warn about Lead in
7 Covered Products manufactured, distributed or sold by such Settling Defendant after the Effective
8 Date.

9 **7. PROVISION OF NOTICE**

10 7.1 When CEH is entitled to receive any notice under this Consent Judgment, the
11 notice shall be sent by first class and electronic mail to:

12 Eric S. Somers
13 Lexington Law Group
14 503 Divisadero Street
15 San Francisco, CA 94117
16 esomers@lexlawgroup.com

17 7.2 When Settling Defendant is entitled to receive any notice under this Consent
18 Judgment, the notice shall be sent by first class and electronic mail to the person(s) identified in
19 Exhibit A for each such Settling Defendant.

20 7.3 Any Party may modify the person and address to whom the notice is to be
21 sent by sending the other Party notice by first class and electronic mail.

22 **8. COURT APPROVAL**

23 8.1 This Consent Judgment shall become effective as a contract upon the date
24 signed by CEH and Settling Defendant, whichever is later, provided however, that CEH shall also
25 prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall
26 support approval of such Motion.

27 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
28 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
purpose.

1 **9. GOVERNING LAW AND CONSTRUCTION**

2 9.1 The terms of this Consent Judgment shall be governed by the laws of the
3 State of California.

4 **10. ATTORNEYS' FEES**

5 10.1 A Party who unsuccessfully brings or contests an action arising out of this
6 Consent Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and
7 costs unless the unsuccessful Party has acted with substantial justification. For purposes of this
8 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
9 Civil Discovery Act of 1986, Code of Civil Procedure §§2016.010, et seq.

10 10.2 Notwithstanding Section 10.1, a Party who prevails in a contested
11 enforcement action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to
12 Code of Civil Procedure §1021.5 against a Party that acted with substantial justification. The Party
13 seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and this
14 provision shall not be construed as altering any procedural or substantive requirements for obtaining
15 such an award.

16 10.3 Nothing in this Section 10 shall preclude a party from seeking an award of
17 sanctions pursuant to law.

18 **11. ENTIRE AGREEMENT**

19 11.1 This Consent Judgment contains the sole and entire agreement and
20 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
21 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
22 merged herein and therein. There are no warranties, representations, or other agreements between
23 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
24 implied, other than those specifically referred to in this Consent Judgment have been made by any
25 Party hereto. No other agreements not specifically contained or referenced herein, oral or
26 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
27 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
28 any of the Parties hereto only to the extent that they are expressly incorporated herein. No

1 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
2 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of
3 this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions
4 hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

5 **12. SUBMISSION OF REPORTS AND DATA TO CEH**

6 12.1 For any report or information that Settling Defendant submits to CEH
7 pursuant to this Consent Judgment, Settling Defendant may make such a submission subject to the
8 terms of the protective order previously entered in this action and the protective order's terms shall
9 apply to the report or information as if it were still in effect.

10 **13. RETENTION OF JURISDICTION**

11 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
12 Consent Judgment.

13 **14. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

14 14.1 Each signatory to this Consent Judgment certifies that he or she is fully
15 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
16 and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

17 **15. NO EFFECT ON OTHER SETTLEMENTS**

18 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any
19 claim against an entity that is not Settling Defendant on terms that are different than those contained
20 in this Consent Judgment.

21 **16. EXECUTION IN COUNTERPARTS**

22 16.1 The stipulations to this Consent Judgment may be executed in counterparts
23 and by means of facsimile or portable document format (pdf), which taken together shall be deemed
24 to constitute one document.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: SEP - 8, 2015

GEORGE C. HERNANDEZ, JR.
Judge of the Superior Court of the State of California

IT IS SO STIPULATED:

Dated: MM (), 2015

CENTER FOR ENVIRONMENTAL HEALTH

[Signature]
CHARLIE P. ZIMMO
Printed Name

Associate Director
Title

Dated: _____, 2015

**J & J SNACK FOODS SALES CORP. AND
J & J SNACK FOODS CORP. OF CALIFORNIA**

Printed Settling Defendant Name

Signature

Printed Signatory Name

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____, 2015

Judge of the Superior Court of the State of California

IT IS SO STIPULATED:

Dated: _____, 2015

CENTER FOR ENVIRONMENTAL HEALTH

Printed Name

Title

Dated: MAY 13, 2015

J & J SNACK FOODS SALES CORP. AND
J & J SNACK FOODS CORP. OF CALIFORNIA

Printed Settling Defendant Name

D. Moore
Signature

DENNIS G MOORE
Printed Signatory Name

EXHIBIT A

Settling Defendant

Covered Products:

Settling Defendant:

1. Defendant's Settlement Payment and Allocation:

Total Settlement Payment \$92,000

Allocation:

| | |
|----------------------------------|----------|
| Civil Penalty OEHHA Portion | \$ 9,150 |
| Civil Penalty CEH Portion | \$ 3,050 |
| Payment in Lieu of Civil Penalty | \$18,300 |
| Attorneys' Fees and Costs | \$61,500 |

2. Person(s) to Receive Notices Pursuant to Section 7.2:

Trenton H. Norris
Sarah Esmaili
Arnold & Porter LLP
San Francisco, CA 94066
trent.norris@aporter.com
Sarah.esmaili@aporter.com

EXHIBIT B

Laboratories Deemed To Comply with the Requirements of Section 2.3.2

Curtis & Tompkins Laboratories

Covance Laboratories

Eurofins

Exova, Inc.

K Prime, Inc.

National Food Laboratory, Inc.

Silliker, Inc.