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ENDORSED
FILED
ALAMEDA COUNTY

DEC - 1 2015

CLERK OF THE SUPERIOR COURT
By YOLANDA ESTRADA Deputy

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 AS
TO UNITED STATES BAKERY, INC.
AND THREE J'S DISTRIBUTING, INC.

1 **1. INTRODUCTION**

2 1.1 The Parties to this Consent Judgment are the Center for Environmental Health, a
3 California non-profit corporation (“CEH”), and Defendants United States Bakery, Inc. (“U.S.
4 Bakery”) and Three J’s Distributing, Inc. (“Three J’s”). U.S. Bakery and Three J’s are referred to
5 herein as Settling Defendants. The Parties enter into this Consent Judgment to settle certain claims
6 asserted by CEH against Settling Defendants as set forth in the operative complaint (“Complaint”)
7 in the above-captioned matter. This Consent Judgment covers cookies containing molasses, ginger,
8 or both molasses and ginger sold by Settling Defendants that have been or will be sold or offered
9 for sale to California consumers (“Covered Products”).

10 1.2 On February 3, 2014, CEH provided a 60-day Notice of Violation under Proposition
11 65 to the California Attorney General, the District Attorneys of every county in California, the City
12 Attorneys of every California city with a population greater than 750,000, Three J’s and Three J’s’
13 customer Winco Foods LLC (“WinCo”), alleging that Three J’s and WinCo violated Proposition 65
14 by exposing persons in California to lead and lead compounds (“Lead”) contained in Covered
15 Products without first providing a clear and reasonable Proposition 65 warning.

16 1.3 On August 8, 2014, CEH provided a 60-day Notice of Violation under Proposition
17 65 to the California Attorney General, the District Attorneys of every county in California, the City
18 Attorneys of every California city with a population greater than 750,000 and U.S. Bakery, alleging
19 that U.S. Bakery violated Proposition 65 by exposing persons to Lead contained in Covered
20 Products without first providing a clear and reasonable Proposition 65 warning.

21 1.4 U.S. Bakery is a corporation or other business entity that manufactures, distributes,
22 sells or offers for sale Covered Products that are sold or offered for sale in California or has done so
23 in the past. Three J’s is a corporation or other business entity that distributes, sells or offers for sale
24 Covered Products that are sold or offered for sale in California or has done so in the past.

25 1.5 On May 1, 2013, CEH filed the original Complaint in the above-captioned matter,
26 and on September 20, 2013, CEH filed the First Amended Complaint. The First Amended
27 Complaint was amended on May 9, 2014 to add Three J’s and WinCo as named defendants and,
28 again on December 18, 2014, to add U.S. Bakery as a named defendant.

1 1.6 For purposes of this Consent Judgment only, CEH and Settling Defendants (the
2 “Parties”) stipulate that this Court has jurisdiction over the allegations of violations contained in the
3 Complaint and personal jurisdiction over Settling Defendants as to the acts alleged in the
4 Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to
5 enter this Consent Judgment as a full and final resolution of all claims which were or could have
6 been raised in the Complaint based on the facts alleged therein with respect to Covered Products
7 manufactured, distributed, offered for sale or sold by Settling Defendants.

8 1.7 Nothing in this Consent Judgment is or shall be construed as an admission by the
9 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
10 Consent Judgment constitute or be construed as an admission by the Parties of any fact, conclusion
11 of law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive
12 or impair any right, remedy, argument or defense the Parties may have in any other pending or
13 future legal proceedings. This Consent Judgment is the product of negotiation and compromise and
14 is accepted by the Parties solely for purposes of settling, compromising, and resolving issues
15 disputed in this Action.

16 **2. INJUNCTIVE RELIEF**

17 2.1 **Specification Compliance Date.** To the extent it has not already done so, no more
18 than thirty (30) days after the date of entry of this Consent Judgment, if a Settling Defendant
19 purchases any Covered Products from a third party that is not under common ownership (a
20 “Covered Product Supplier”), it shall provide the Reformulation Level set forth in Section 2.2 to
21 each Covered Product Supplier and shall instruct each such Covered Product Supplier to provide it
22 with Covered Products that comply with the Reformulation Level set forth in Section 2.2. If in the
23 future a Settling Defendant purchases Covered Products from a Covered Product Supplier that it has
24 not previously provided with instructions regarding the Reformulation Level set forth in Section
25 2.2, that Settling Defendant shall provide the Reformulation Level set forth in Section 2.2 to such
26 Covered Product Supplier prior to placing an initial order for Covered Products and instruct the
27 Covered Product Supplier to provide it with Covered Products that comply with the Reformulation
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1 Level set forth in Section 2.2. Settling Defendants shall retain and make available to CEH upon
2 reasonable written request records of communications sent to and received from Covered Product
3 Suppliers that are related to the requirement of this Section 2.1 for a period of five (5) years from
4 the date of entry of this Consent Judgment (the “Effective Date”).

5 **2.2 Reformulation of Covered Products.** Settling Defendants shall not sell or offer for
6 sale a Covered Product that will be sold or offered for sale either by that Settling Defendant or by
7 third parties to California consumers that was manufactured on or after the Effective Date (the
8 “Reformulation Deadline”) if that Covered Product contains more than thirty (30) parts per billion
9 (“ppb”) Lead by weight (the “Reformulation Level”), such concentration to be determined by use of
10 a test performed by an accredited laboratory using inductively coupled plasma mass spectrometry
11 (ICP-MS) equipment with a level of detection of at least ten (10) ppb. Upon inquiry by CEH
12 concerning a Covered Product’s best-by or sell-by (or equivalent) date or other code, the Settling
13 Defendants shall promptly provide CEH with such Covered Product’s date of manufacture.

14 **2.2.1 Alternative Covered Product Compliance Requirements.** The Parties
15 acknowledge that U.S. Bakery is a company based in Oregon that in some instances manufactures
16 Private Label Covered Products. Private Label Covered Products means Covered Products that are
17 sold at retail where: (i) the products (or their containers) are labeled with the brand or trademark of
18 a person other than U.S. Bakery (or any affiliate of U.S. Bakery), (ii) the entity whose brand or
19 trademark the products (or containers) are labeled has authorized or caused the product to be so
20 labeled, (iii) the identity, brand or trademark of U.S. Bakery does not appear on such label; and (iv)
21 the products are sold by U.S. Bakery only to distributors and other non-retail wholesale entities over
22 which U.S. Bakery has no control regarding the packaging, labeling, marketing or distribution of
23 the products. As an alternative to the requirements of Sections 2.2, U.S. Bakery may sell Private
24 Label Covered Products that do not meet the Reformulation Level provided that all of the following
25 restrictions have been met.
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1 2.2.1.1 U.S. Bakery shall not sell any Private Label Covered Products that
2 do not meet the Reformulation Level to a person or entity that it knows or should know will directly
3 or indirectly introduce such Private Label Covered Products to the California marketplace;

4 2.2.1.2 U.S. Bakery may sell Private Label Covered Products that do not
5 comply with the reformulation Level only if:

6 (a) it has provided the purchaser with written notice with each
7 shipment that such Private Label Covered Products contain lead, are not labelled in compliance with
8 California’s Proposition 65 and are not to be sold or offered for sale to California consumers; and

9 (b) U.S. Bakery has received and retained written confirmation
10 from any such customer acknowledging receipt and understanding of each such notice.

11 2.3 **Testing.** To ensure compliance with Section 2.2 and except as provided in Section
12 2.5, each Settling Defendant that manufactures or bakes Covered Products shall conduct random
13 testing of such Covered Products and take the follow-up actions described in this section
14 (“Validation Testing”). A Settling Defendant that does not manufacture or bake Covered Products
15 and that only purchases finished Covered Products from other entities shall not be required to
16 conduct Validation Testing.

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

25 2.3.2 Methods of Testing. Settling Defendants shall conduct Validation
26 Testing pursuant to one of the following methods: (1) the FDA sample preparation protocol
27 discussed in the method entitled “Elemental Analysis Manual: Section 4.4 Inductively Coupled
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1 Plasma-Atomic Emission Spectrometric Determination of Elements in Food Using Microwave
2 Assisted Digestion”¹ or (2) a microwave- or heat-assisted acid digestion method employing high-
3 purity reagents. In either event, the laboratory shall digest at least 0.5 grams of each sample taken
4 from a properly homogenized random selection of a complete package of a Covered Product from a
5 particular production lot, and shall analyze each such sample without further dilution using ICP-
6 MS.

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

18 2.3.4 Duration of Testing. In the event that the Validation Testing
19 demonstrates compliance with the Reformulation Level by a Settling Defendant for six (6)
20 continuous quarters in which production of a type of Covered Product has occurred, such Settling
21 Defendant may send written notice to CEH and thereafter may cease Validation Testing for that
22 type of Covered Product; provided however, if there is a material change in the type or level of
23 ginger or molasses used in a Covered Product that is reasonably likely to affect the Lead levels in
24 the product, then the Settling Defendant shall arrange for testing for a minimum of three
25 consecutive production quarters after that change.

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

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

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

22 2.3.6 Records. The testing reports and results of the Validation Testing
23 performed pursuant to this Consent Judgment shall be retained by the Settling Defendant that
24 manufactured or baked the Covered Products subjected to testing for four (4) years and make such
25 test results available to CEH upon reasonable request.

26 2.4 **Good Faith Commitment to Pursue Further Lead Reduction.** Except as
27 provided in Section 2.5, Settling Defendants who manufacture or bake Covered Products shall
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1 continue to take, or cause to be taken, good faith and commercially reasonable efforts to further
2 reduce the Lead content of its Covered Products with a goal of Covered Products having a
3 consistent Lead content of seventeen (17) ppb or less. These efforts shall include, at a minimum,
4 efforts to further adjust recipes and formulas that will reduce Lead content in Covered Products and
5 attempts to secure Covered Product ingredients such as molasses and ginger with lower Lead
6 content. Within fifteen days of the Reformulation Deadline, and annually thereafter for two more
7 years, a Settling Defendant that manufactures or bakes Covered Products shall submit to CEH a
8 written report of the activities it has undertaken to effectuate its good faith commitment under this
9 paragraph. If such Settling Defendant has test results demonstrating that all of its Covered Products
10 have a consistent Lead content of seventeen (17) ppb or less and it provides such documentation to
11 CEH, or if CEH and such a Settling Defendant otherwise agree in writing, then such Settling
12 Defendant need not submit any subsequent annual report to CEH pursuant to this paragraph. To the
13 extent that a Settling Defendant who does not manufacture or bake Covered Products continues to
14 source Covered Products that may be sold in California from others, that Settling Defendant shall,
15 for a period of at least two years following the Effective Date, undertake reasonable good faith
16 efforts to try and obtain Covered Products with Lead levels below the Reformulation Level, with a
17 goal of ultimately obtaining Covered Products having a consistent Lead content of seventeen (17)
18 ppb or less.

19 **2.5 Products Not Subject to Testing.** The requirements of Sections 2.3 and 2.4 shall
20 not apply to any type of Covered Product for which CEH and a Settling Defendant agree in writing
21 that such sections shall not apply, nor shall they apply to Private Label Covered Products that are
22 sold in compliance with Section 2.2.1.

23 **3. ENFORCEMENT**

24 **3.1 General Enforcement Provisions.** CEH may, by motion or application for an order
25 to show cause before this Court, enforce the terms and conditions contained in this Consent
26 Judgment. Any action to enforce alleged violations of Section 2.2 by a Settling Defendant shall be
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1 brought exclusively pursuant to this Section 3, and, as applicable, be subject to the meet and confer
2 requirement of Section 3.2.4.

3 **3.2 Enforcement of Reformulation Commitment.**

4 3.2.1 Notice of Violation. In the event that CEH identifies a Covered Product
5 that was sold or offered for sale to California consumers with a best-by or sell-by (or equivalent)
6 date or other code that reflects that the Covered Product was manufactured on or after the Effective
7 Date (based on either the information provided to CEH by a Settling Defendant or after first giving
8 the Settling Defendant an opportunity to identify the manufacture date as provided in Section 2.2),
9 and for which CEH has laboratory test results showing that the Covered Product has a Lead level
10 exceeding the Reformulation Level, CEH may issue a Notice of Violation pursuant to this Section.
11 Such Notice of Violation shall be based upon a test result sufficient to establish an exceedance of
12 the Reformulation Level as it is to be evaluated under Section 2.3; the results employed shall also
13 meet the sampling, preparation, testing, and laboratory criteria specified under Section 2.3.

14 3.2.2 Service of Notice of Violation and Supporting Documentation.

15 3.2.2.1 Subject to Section 3.2.1, the Notice of Violation shall be sent to the
16 person(s) identified in Exhibit A to receive notices for the Settling Defendant, and must be served
17 within 45 days of the date the Covered Products at issue were purchased or otherwise acquired by
18 CEH, provided, however, that CEH may have up to an additional 45 days to send the Notice of
19 Violation if, notwithstanding CEH's good faith efforts, the test data required by Section 3.2.2.2
20 below cannot be obtained by CEH from its laboratory before expiration of the initial 45 day period.
21 If the Covered Product is a Private Label Covered Product, the time to serve the Notice of Violation
22 shall run from the date CEH learns that the Private Label Covered Product was sold by U.S. Bakery.

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

4 3.2.3 Notice of Election of Response. No more than thirty (30) days after
5 effectuation of service of a Notice of Violation, the Settling Defendant shall provide written notice
6 to CEH whether it elects to contest the allegations contained in a Notice of Violation (“Notice of
7 Election”). Failure to provide a Notice of Election within thirty (30) days of effectuation of service
8 of a Notice of Violation shall be deemed an election to contest the Notice of Violation.

9 3.2.3.1 If a Notice of Violation is contested, the Notice of Election shall
10 include all then-available documentary evidence regarding the alleged violation, including all test
11 data, if any. If the Settling Defendant or CEH later acquires additional test or other data regarding
12 the alleged violation, it shall notify the other party and promptly provide all such data or
13 information to the party. Any test data used to contest a Notice of Violation shall meet the criteria
14 of Section 2.3.

15 3.2.3.2 If U.S. Bakery contends that the Covered Product identified in the
16 Notice of Violation is a Private Label Covered Product, it shall include with its Notice of Election
17 to CEH the identity of the customer to which the Covered Products were sold as well as full
18 documentation supporting the classification of the Covered Products as Private Label Covered
19 Product, and if the Notice of Violation is contested, the notice and return confirmation
20 acknowledgment identified in Section 2.2.1.2.

21 3.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and the
22 Settling Defendant shall meet and confer to attempt to resolve their dispute. Within 30 days of
23 serving a Notice of Election contesting a Notice of Violation, and if no enforcement action or
24 application has been filed by CEH pursuant to Section 3.1, the Settling Defendant may withdraw the
25 original Notice of Election contesting the violation and serve a new Notice of Election to not
26 contest the violation, provided, however, that, in this circumstance, the Settling Defendant shall pay
27 \$2,500 in addition to any payment required under this Consent Judgment. At any time, CEH may
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1 withdraw a Notice of Violation, in which case for purposes of this Section 3.2 the result shall be as
2 if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of
3 Violation results within thirty (30) days of a Notice of Election to contest, CEH may file an
4 enforcement motion or application pursuant to Section 3.1. In any such proceeding, CEH may seek
5 whatever fines, costs, penalties, attorneys' fees or other remedies are provided by law for failure to
6 comply with the Consent Judgment.

7 3.2.5 Non-Contested Matters. If the Settling Defendant elects not to contest
8 the allegations in a Notice of Violation, it shall undertake corrective action and make payments, if
9 any, as set forth below.

10 3.2.5.1 If the Settling Defendant did not manufacture or bake the Covered
11 Product identified in the Notice of Violation, it shall identify on a confidential basis to CEH (by
12 proper name, address of principal place of business and telephone number) the person or entity that
13 sold the Covered Products to the Settling Defendant and the manufacturer and other entities in the
14 upstream chain of distribution of the Covered Product, provided that such information is reasonably
15 available. In such an instance, if the entity that manufactured or baked the Covered Product is also
16 a settling defendant under this or any other consent judgment entered into by CEH concerning Lead
17 in cookies containing molasses, ginger, or both molasses and ginger, then the Settling Defendant
18 that manufactured or baked the cookies shall be responsible for the further corrective action or
19 payments pursuant to its consent judgment obligations and the Settling Defendant that did not
20 manufacture or bake the Covered Product shall not be responsible for the further corrective action
21 or payments as set forth below.

22 3.2.5.2 If the test data provided by CEH in support of the Notice of
23 Violation shows that Lead content in a Covered Product is above the Reformulation Level but less
24 than sixty (60) ppb, then, except as provided in Section 3.2.5.1 above, the Settling Defendant that
25 does not contest a Notice of Violation shall take the following corrective action and make the
26 following payments, if any:
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1 (a) The Settling Defendant shall include in its Notice of Election a
2 detailed description with supporting documentation of the corrective action that it has undertaken or
3 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,
4 provide reasonable assurance that the Settling Defendant has stopped selling or offering for sale in
5 California all Covered Products from the same lot as that of the Covered Products identified in
6 CEH's Notice of Violation. The Settling Defendant shall make available to CEH for inspection
7 and/or copying records and correspondence regarding the corrective action. If there is a dispute
8 over the corrective action, the Settling Defendant and CEH shall meet and confer pursuant to
9 Section 3.2.4 before seeking any remedy in court. In no case shall CEH issue more than one NOV
10 per manufacturing lot of a type of Covered Product.

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

25 3.2.5.3 If the test data provided by CEH in support of the Notice of
26 Violation reports a Lead content in a Covered Product of more than sixty (60) ppb, then, except as
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1 provided in Section 3.2.5.1 above, the Settling Defendant shall take the following corrective action
2 and make the following payments:

3 (a) The Settling Defendant shall include in its Notice of Election a
4 detailed description with supporting documentation of the corrective action that it has undertaken or
5 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,
6 provide reasonable assurance that all Covered Products having the same lot number as that of the
7 Covered Product identified in CEH's Notice of Violation (the "Noticed Covered Products") will not
8 be thereafter sold or offered for sale to California consumers, that the Noticed Covered Products are
9 removed from the California market and that the Settling Defendant has sent instructions to any of
10 its stores and/or customers that offer the Noticed Covered Products for sale to cease offering the
11 Noticed Covered Products for sale to California consumers and to either return all such Noticed
12 Covered Products to the Settling Defendant for destruction, or to directly destroy such Noticed
13 Covered Products. The Settling Defendant shall keep and make available to CEH for inspection
14 and copying records and correspondence regarding the market withdrawal and destruction of the
15 Noticed Covered Products. If there is a dispute over the corrective action, the Settling Defendant
16 and CEH shall meet and confer before seeking any remedy in court. In no case shall CEH issue
17 more than one NOV per manufacturing lot of a type of Covered Product.

18 (b) If the Notice of Violation is the first, second, third or fourth
19 Notice of Violation received by a Settling Defendant under Section 3.2.5.2 that was not successfully
20 contested or withdrawn, that Settling Defendant shall pay \$16,000 for each Notice of Violation. If a
21 Settling Defendant has received more than four Notices of Violation under Section 3.2.5.2 that were
22 not successfully contested or withdrawn, that Settling Defendant shall pay \$24,000 for each Notice
23 of Violation. If a Settling Defendant produces with its Notice of Election test data on the Covered
24 Product that: (i) was conducted prior to the date CEH purchased the Covered Product that is the
25 subject of the Notice of Violation; (ii) was conducted on the same or same type of Covered Product;
26 and (iii) demonstrates Lead levels below the Reformulation Level as evaluated under Section 2.3.4,
27 then any payment under this Section shall be reduced by fifty percent.

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1 3.2.6 Payments. Any payments under Section 3.2 shall be made by check
2 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a
3 Notice of Election triggering a payment and which shall be used as reimbursement for costs for
4 investigating, preparing, sending and prosecuting Notices of Violation, and to reimburse attorneys’
5 fees and costs incurred in connection with these activities.

6 3.3 **Repeat Violations**. If a Settling Defendant has received four or more Notices of
7 Violation concerning the same type of Covered Product that were not successfully contested or
8 withdrawn in any twelve (12) month period then, at CEH’s option, CEH may seek whatever fines,
9 costs, penalties, attorneys’ fees or other remedies that are provided by law for failure to comply
10 with the Consent Judgment. Prior to seeking such relief, CEH shall meet and confer with the
11 Settling Defendant for at least 30 days to determine if the Settling Defendant and CEH can agree on
12 measures that the Settling Defendant can undertake to prevent future violations.

13 **4. PAYMENTS**

14 4.1 **Payments by Settling Defendants**. Within five (5) days of the entry of this Consent
15 Judgment, each Settling Defendant shall pay the amounts specified for it on Exhibit A.

16 4.2 **Allocation of Payments**. The total settlement amount for each Settling Defendant
17 shall be paid in four separate checks and delivered as set forth below. Any failure by a Settling
18 Defendant to comply with the payment terms herein shall, at CEH’s discretion, be subject to a
19 stipulated late fee in the amount of \$100 for each day after the delivery date the payment is
20 received. The late fees required under this Section shall be recoverable, together with reasonable
21 attorneys’ fees, in an enforcement proceeding brought pursuant to Section 3 of this Consent
22 Judgment. The funds paid by each Settling Defendant shall be allocated as set forth on Exhibit A
23 between the following categories and made payable as follows:

24 4.2.1 A civil penalty pursuant to Health & Safety Code § 25249.7(b). The
25 civil penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12
26 (25% to CEH and 75% to the State of California’s Office of Environmental Health Hazard
27 Assessment (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty payment shall be
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1 made payable to OEHHA and associated with taxpayer identification number 68-0284486. This
2 payment shall be delivered as follows:

3 For United States Postal Service Delivery:
4 Attn: Mike Gyurics
5 Fiscal Operations Branch Chief
6 Office of Environmental Health Hazard Assessment
7 P.O. Box 4010, MS #19B
8 Sacramento, CA 95812-4010

9 For Non-United States Postal Service Delivery:
10 Attn: Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 1001 I Street, MS #19B
14 Sacramento, CA 95814

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

19 4.2.2 A payment in lieu of civil penalty to CEH pursuant to Health & Safety
20 Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH shall use such
21 funds to continue its work educating and protecting people from exposures to toxic chemicals,
22 including heavy metals. In addition, as part of its Community Environmental Action and Justice
23 Fund, CEH will use four (4) percent of such funds to award grants to grassroots environmental
24 justice groups working to educate and protect people from exposures to toxic chemicals. The
25 method of selection of such groups can be found at the CEH web site at www.ceh.org/justicefund.
26 The payment pursuant to this Section shall be made payable to the Center For Environmental Health
27 and associated with taxpayer identification number 94-3251981.

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

1 **5. MODIFICATION AND DISPUTE RESOLUTION**

2 **5.1 Modification.** This Consent Judgment may be modified from time to time by
3 express written agreement of the Parties, with the approval of the Court, or by an order of this Court
4 upon motion and in accordance with law.

5 **5.2 Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
6 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
7 modify the Consent Judgment.

8 **6. CLAIMS COVERED AND RELEASE**

9 **6.1** This Consent Judgment is a full, final and binding resolution between CEH on behalf
10 of itself and the public interest and each Settling Defendant and each Settling Defendant’s parents,
11 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
12 agents, shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to
13 which a Settling Defendant directly or indirectly distributes or sells Covered Products, including but
14 not limited to distributors, wholesalers, customers, retailers, franchisees, licensors and licensees
15 (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn
16 about alleged exposure to Lead contained in Covered Products that were sold, distributed or offered
17 for sale by such Settling Defendant prior to the Effective Date.

18 **6.2** CEH, for itself, its agents, successors and assigns, releases, waives, and forever
19 discharges any and all claims against Settling Defendants, Defendant Releasees, and Downstream
20 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or common
21 law claims that have been or could have been asserted by CEH individually or in the public interest
22 regarding the failure to warn about exposure to Lead arising in connection with Covered Products
23 manufactured by or for a Settling Defendant prior to the Reformulation Deadline.²

24 **6.3** Compliance with the terms of this Consent Judgment by a Settling Defendant shall
25 constitute compliance with Proposition 65 by such Settling Defendant, its Defendant Releasees and

26 _____
27 ² With respect to Sections 6.1 and 6.2 above, CEH acknowledges that WinCo is a Downstream
28 Defendant Releasee of the Settling Defendants and shall accordingly dismiss WinCo from this
action without prejudice within 30 days following the Court’s approval and entry of this Consent
Judgment, provided that WinCo agrees to a cost waiver.

1 its Downstream Defendant Releasees with respect to any alleged failure to warn about Lead in
2 Covered Products manufactured, distributed or sold by such Settling Defendant after the Effective
3 Date.

4 **7. PROVISION OF NOTICE**

5 7.1 When CEH is entitled to receive any notice under this Consent Judgment, the notice
6 shall be sent by first class and electronic mail to:

7 Eric S. Somers
8 Lexington Law Group
9 503 Divisadero Street
10 San Francisco, CA 94117
11 esomers@lexlawgroup.com

12 7.2 When a Settling Defendant is entitled to receive any notice under this Consent
13 Judgment, the notice shall be sent by first class and electronic mail to the person(s) identified in
14 Exhibit A.

15 7.3 Any Party may modify the person and address to whom the notice is to be sent by
16 sending the other Party notice by first class and electronic mail.

17 **8. COURT APPROVAL**

18 8.1 This Consent Judgment shall become effective as a contract upon the date signed by
19 CEH and Settling Defendants, whichever is later, provided however, that CEH shall also prepare
20 and file a Motion for Approval of this Consent Judgment and Settling Defendants shall support
21 approval of such Motion.

22 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
23 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

24 **9. GOVERNING LAW AND CONSTRUCTION**

25 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
26 California.

27 **10. ATTORNEYS' FEES**

28 10.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs unless

1 the unsuccessful Party has acted with substantial justification. For purposes of this Consent
2 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
3 Discovery Act of 1986, Code of Civil Procedure §§2016.010, et seq.

4 10.2 Notwithstanding Section 10.1, a Party who prevails in a contested enforcement
5 action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of Civil
6 Procedure §1021.5 against a Party that acted with substantial justification. The Party seeking such
7 an award shall bear the burden of meeting all of the elements of §1021.5, and this provision shall
8 not be construed as altering any procedural or substantive requirements for obtaining such an award.

9 10.3 Nothing in this Section 10 shall preclude a party from seeking an award of sanctions
10 pursuant to law.

11 **11. ENTIRE AGREEMENT**

12 11.1 This Consent Judgment contains the sole and entire agreement and understanding of
13 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
14 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
15 therein. There are no warranties, representations, or other agreements between the Parties except as
16 expressly set forth herein. No representations, oral or otherwise, express or implied, other than
17 those specifically referred to in this Consent Judgment have been made by any Party hereto. No
18 other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed
19 to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced
20 herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the
21 extent that they are expressly incorporated herein. The obligations set forth in this Consent
22 Judgment and its Exhibit A's shall be deemed several and apply severally (and not joint and
23 severally) as between U.S. Bakery and Three J's. No supplementation, modification, waiver, or
24 termination of this Consent Judgment shall be binding unless executed in writing by the Party to be
25 bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or
26 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such
27 waiver constitute a continuing waiver.
28

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

2 12.1 For any report or information that a Settling Defendant submits to CEH pursuant to
3 this Consent Judgment, the Settling Defendant may make such a submission subject to the terms of
4 the protective order previously entered in this action and the protective order's terms shall apply to
5 the report or information as if it were still in effect.

6 **13. RETENTION OF JURISDICTION**

7 13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent
8 Judgment.

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

10 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
11 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute
12 the Consent Judgment on behalf of the Party represented and legally to bind that Party.

13 **15. NO EFFECT ON OTHER SETTLEMENTS; EXCEPTION**

14 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
15 against an entity that is not a Settling Defendant on terms that are different than those contained in
16 this Consent Judgment.

17 15.2 By executing this Consent Judgment, U.S. Bakery and Three J's shall be deemed to
18 have resolved and waived, and hereby release each other from, any potential claims arising as
19 between them relating to this action or the expenses they have incurred in association with it,
20 including but not limited to defense costs or the expense associated with the fulfillment of their
21 respective obligations as set forth herein.

22 **16. EXECUTION IN COUNTERPARTS**

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

1 **IT IS SO ORDERED, ADJUDGED, AND**
2 **DECREED:**

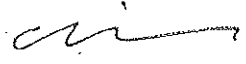
3 Dated: DEC - 1 2015
4 , 2015

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

6 **IT IS SO STIPULATED:**

7
8 Dated: Oct 2, 2015

CENTER FOR ENVIRONMENTAL HEALTH

9
10 
Signature

11
12 CHARLIE PIZARRO
Printed Name

13
14 ASSOCIATE DIRECTOR
Title

15
16
17 Dated: _____, 2015

UNITED STATES BAKERY, INC.

18
19 _____
Signature

20
21 _____
Printed Name

22
23 _____
Title

1 **IT IS SO ORDERED, ADJUDGED, AND**
2 **DECREED:**

3
4 Dated: _____, 2015

Judge of the Superior Court of the State of California

6 **IT IS SO STIPULATED:**

7
8 Dated: _____, 2015

CENTER FOR ENVIRONMENTAL HEALTH

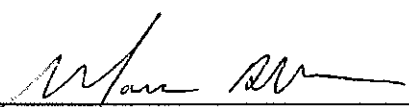
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Signature

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Printed Name

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Title

16
17 Dated: October 1, 2015

UNITED STATES BAKERY, INC.

18
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Signature

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21 Marc Auser

Printed Name

22
23 President / COO

Title

Dated: 10-2-15, 2015

THREE J'S DISTRIBUTING, INC.

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Jon B. Jones
Signature

Jon B. Jones
Printed Name

President
Title

EXHIBIT A

United States Bakery, Inc.

Defendant: United States Bakery, Inc.

Defendant's Settlement Payment and Allocation:

Total Settlement Payment	\$87,500
Civil Penalty OEHHA Portion	\$ 8,550
Civil Penalty CEH Portion	\$ 2,850
Payment in Lieu of Civil Penalty	\$17,100
Attorneys' Fees and Costs	\$59,000

Person(s) to Receive Notices Pursuant to Section 8:

Steven M. Wilker
Tonkon Torp LLP
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, Oregon 97204
steven.wilker@tonkon.com

1 **Three J's Distributing, Inc.**

2 **Defendant: Three J's Distributing, Inc.**

3 **Defendant's Settlement Payment and Allocation:**

4

5	Total Settlement Payment	\$25,000
6	Civil Penalty OEHHA Portion	\$ 2,400
7	Civil Penalty CEH Portion	\$ 800
8	Payment in Lieu of Civil Penalty	\$ 4,800
9	Attorneys' Fees and Costs	\$ 17,000

10 **Person(s) to Receive Notices Pursuant to Section 8:**

11 Robert L. Falk
12 Morrison Foerster
13 425 Market Street
14 San Francisco, California 94105
15 rfalk@mof.com

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EXHIBIT B

Laboratories Deemed To Comply with the Requirements of Section 2.3.2

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Curtis & Tompkins Laboratories

Covance Laboratories

Eurofins

Exova, Inc.

K Prime, Inc.

National Food Laboratory, Inc.

Silliker, Inc.