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ENDORSED  
FILED  
ALAMEDA COUNTY

OCT - 4 2016

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 COMMERCIAL BAKERIES CORP.

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 Commercial Bakeries Corp. (“Commercial  
4 Bakeries”). The Parties enter into this Consent Judgment to settle certain claims asserted by CEH  
5 against Commercial Bakeries as set forth in the operative complaint (“Complaint”) in the above-  
6 captioned matter. This Consent Judgment covers cookies containing molasses, ginger, or both  
7 molasses and ginger sold by Commercial Bakeries that have been or will be sold or offered for sale to  
8 California consumers (“Covered Products”).

9 1.2 On August 8, 2014, CEH provided a 60-day Notice of Violation under Proposition 65  
10 to Commercial Bakeries, the California Attorney General, the District Attorneys of every county in  
11 California and the City Attorneys of every California city with a population greater than 750,000,  
12 alleging that Commercial Bakeries violated Proposition 65 by exposing persons to lead and lead  
13 compounds (“Lead”) contained in Covered Products without first providing a clear and reasonable  
14 Proposition 65 warning.

15 1.3 Commercial Bakeries is a corporation or other business entity that manufactures,  
16 distributes, sells or offers for sale Covered Products or has done so in the past.

17 1.4 On May 1, 2013, CEH filed the original Complaint in the above-captioned matter, and  
18 on August 3, 2015, CEH filed the Second Amended Complaint. The Second Amended Complaint  
19 names Commercial Bakeries as a defendant.

20 1.5 For purposes of this Consent Judgment only, CEH and Commercial Bakeries (the  
21 “Parties”) stipulate that this Court has jurisdiction over the allegations of violations contained in the  
22 Complaint and personal jurisdiction over Commercial Bakeries as to the acts alleged in the  
23 Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to  
24 enter and enforce this Consent Judgment as a full and final resolution of all claims which were or  
25 could have been raised in the Complaint based on the facts alleged therein with respect to Covered  
26 Products manufactured, distributed, offered for sale or sold by Commercial Bakeries.

27 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the  
28 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the

1 Consent Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of  
2 law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or  
3 impair any right, remedy, argument or defense the Parties may have in any other pending or future  
4 legal proceedings. This Consent Judgment is the product of negotiation and compromise and is  
5 accepted by the Parties solely for purposes of settling, compromising, and resolving issues disputed  
6 in this Action.

7 **2. INJUNCTIVE RELIEF**

8 2.1 **Specification Compliance Date.** To the extent it has not already done so, no more  
9 than thirty (30) days after the date of entry of this Consent Judgment, if Commercial Bakeries  
10 purchases any Covered Products from a third party that is not under common ownership (a “Covered  
11 Product Supplier”), it shall provide the Reformulation Level set forth in Section 2.2 to each Covered  
12 Product Supplier and shall instruct each such Covered Product Supplier to provide it with Covered  
13 Products that comply with the Reformulation Level set forth in Section 2.2. If in the future  
14 Commercial Bakeries purchases Covered Products from a Covered Product Supplier that it has not  
15 previously provided with instructions regarding the Reformulation Level set forth in Section 2.2,  
16 Commercial Bakeries shall provide the Reformulation Level set forth in Section 2.2 to such Covered  
17 Product Supplier prior to placing an initial order for Covered Products and instruct the Covered  
18 Product Supplier to provide it with Covered Products that comply with the Reformulation Level set  
19 forth in Section 2.2. Commercial Bakeries shall retain and make available to CEH upon reasonable  
20 written request records of communications sent to and received from Covered Product Suppliers that  
21 are related to the requirement of this Section 2.1 for a period of five (5) years from the date of entry  
22 of this Consent Judgment (the “Effective Date”).

23 2.2 **Reformulation of Covered Products.** Commencing on the date that is the later of the  
24 Effective Date or May 31, 2016 (the “Compliance Date”), Commercial Bakeries shall not purchase,  
25 manufacture, ship, sell or offer for sale any Covered Product that will be offered for sale to California  
26 consumers that contains more than thirty (30) parts per billion (“ppb”) Lead by weight (the  
27 “Reformulation Level”), such concentration to be determined by use of a test performed by an  
28

1 accredited laboratory using inductively coupled plasma mass spectrometry (ICP-MS) equipment with  
2 a level of detection of at least ten (10) ppb.

3       2.3     **Testing.** Except as provided in Section 2.5, to ensure compliance with Section 2.2,  
4 Commercial Bakeries shall conduct random testing of Covered Products and take the follow-up  
5 actions described in this section (“Validation Testing”).

6               2.3.1     Covered Products To Be Tested. Validation Testing shall be performed on  
7 a quarterly basis for each “type” of Covered Product that will be offered for sale in California after  
8 the Compliance Date. Such Validation Testing shall be performed on samples drawn randomly from  
9 single production lots of each “type” of Covered Product manufactured during that quarter. For  
10 purposes of this Consent Judgment a “type” of a Covered Product is either each individual SKU for  
11 Covered Products or a group of Covered Products which CEH and Commercial Bakeries have agreed  
12 in writing has materially the same characteristics based on the type, supplier and amount of ginger or  
13 molasses used in its recipe or formula.

14              2.3.2     Methods of Testing. Commercial Bakeries shall conduct Validation  
15 Testing pursuant to one of the following methods: (1) the FDA sample preparation protocol discussed  
16 in the method entitled “Elemental Analysis Manual: Section 4.4 Inductively Coupled Plasma-Atomic  
17 Emission Spectrometric Determination of Elements in Food Using Microwave Assisted Digestion;”<sup>1</sup>  
18 or (2) a microwave- or heat-assisted acid digestion method employing high-purity reagents. In either  
19 event, the laboratory shall digest at least 0.5 grams of each sample taken from a properly  
20 homogenized random selection of a complete package of a Covered Product from a particular  
21 production lot, and shall analyze each such sample without further dilution using ICP-MS.

22              2.3.3     Laboratories Conducting Validation Testing. Any Validation Testing  
23 shall be performed by a laboratory meeting at least one of the following standards: Environmental  
24 Laboratory Certification from the State of California, Department of Health Services, Environmental  
25 Laboratory Accreditation Program; NSF International; American Association for Laboratory  
26 Accreditation for Chemical Testing; International Standards Organization/IEC via ANSI-ASQ; or an

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

1 in-house laboratory or other facility experienced in testing for lead levels in foods that complies with  
2 the Production and Process Control System Requirements for Laboratory Operations set forth in 21  
3 C.F.R. Part 111, Subpart J, including but not limited to the requirements for written procedures,  
4 requirements for laboratory control processes, requirements for laboratory methods and examination,  
5 record retention policies, and other laboratory requirements. Laboratories deemed to meet these  
6 requirements are listed on Exhibit A.

7           2.3.4    Duration of Testing. In the event that the Validation Testing demonstrates  
8 compliance with the Reformulation Level by Commercial Bakeries for six (6) continuous quarters in  
9 which production of a type of Covered Product has occurred, Commercial Bakeries may send written  
10 notice to CEH and thereafter may cease Validation Testing for that type of Covered Product;  
11 provided however, if there is a material change in the type or level of ginger or molasses used in a  
12 Covered Product that is reasonably likely to affect the Lead levels in the product, then Commercial  
13 Bakeries shall arrange for testing for a minimum of three (3) consecutive production quarters after  
14 that change.

15           2.3.5    Covered Products That Exceed Reformulation Level. If a Validation  
16 Testing result indicates that a type of a Covered Product exceeds the Reformulation Level,  
17 Commercial Bakeries shall ensure that all Covered Products from the same production lot as those  
18 from which the sample of the Covered Product(s) that exceeded the Reformulation Level were drawn  
19 as well as other lots of the same type of Covered Product produced in the same calendar quarter that  
20 were not directly subject to Validation Testing (the “Non-Compliant Products”) will not be sold or  
21 offered for sale to California consumers.

22           2.3.5.1 Notwithstanding the foregoing, if the Validation Testing results from a  
23 sample of a type of Covered Product exceeds the Reformulation Level, Commercial Bakeries may  
24 collect up to three (3) more samples of the Covered Product from the same production lot and have  
25 those samples tested in accordance with Section 2.3. If the results of Validation Testing of all of the  
26 additional samples of a type of Covered Product collectively yield an arithmetic mean of no more  
27 than thirty (30) ppb Lead by weight, Commercial Bakeries may treat that type of Covered Product as  
28 meeting the Reformulation Level for that Validation Testing cycle as long as no result for a sample

1 exceeds fifty (50) ppb Lead. If a sample result exceeds fifty (50) ppb Lead, Commercial Bakeries  
2 may collect three (3) more samples of the Covered Product from the same production lot and have  
3 those samples tested in accordance with Section 2.3. Provided that none of those additional test  
4 results exceed forty (40) ppb, those additional test results shall then be used in place of the sample  
5 that exceeded fifty (50) ppb in determining whether the arithmetic mean of Validation Test results for  
6 the Covered Product exceeded the Reformulation Level.

7           2.3.6 Records. The testing reports and results of the Validation Testing  
8 performed pursuant to this Consent Judgment shall be retained by Commercial Bakeries for four (4)  
9 years and made available to CEH upon reasonable request.

10           2.4 **Good Faith Commitment to Pursue Further Lead Reduction.** Except as provided  
11 in Section 2.5, Commercial Bakeries shall continue to take, or cause to be taken, good faith and  
12 commercially reasonable efforts to further reduce the Lead content of its Covered Products with a  
13 goal of Covered Products having a consistent Lead content of seventeen (17) ppb or less. These  
14 efforts shall include, at a minimum, efforts to further adjust recipes and formulas that will reduce  
15 Lead content in Covered Products and attempts to secure Covered Product ingredients such as  
16 molasses and ginger with lower Lead content. Within sixty (60) days after days of the Effective  
17 Date, and annually thereafter for two (2) more years, Commercial Bakeries shall submit to CEH a  
18 written report of the activities it has undertaken to effectuate its good faith commitment under this  
19 paragraph. If Commercial Bakeries has test results demonstrating that all of its Covered Products  
20 have a consistent Lead content of seventeen (17) ppb or less and it provides such documentation to  
21 CEH, or if CEH and Commercial Bakeries otherwise agree in writing, then Commercial Bakeries  
22 need not submit any subsequent annual report to CEH pursuant to this paragraph.

23           2.5 **Products Not Subject to Testing.** The requirements of Sections 2.3 and 2.4 shall not  
24 apply to any type of Covered Product for which CEH and Commercial Bakeries agree in writing that  
25 such sections shall not apply.

### 26 **3. ENFORCEMENT**

27           3.1 **General Enforcement Provisions.** CEH may, by motion or application for an order  
28 to show cause before this Court, enforce the terms and conditions contained in this Consent

1 Judgment. Any action to enforce alleged violations of Section 2.2 by Commercial Bakeries shall be  
2 brought exclusively pursuant to this Section 3, and be subject to the meet and confer requirement of  
3 Section 3.2.4 if it is applicable.

4 **3.2 Enforcement of Reformulation Commitment.**

5 3.2.1 Notice of Violation. In the event that CEH identifies a Covered Product  
6 that was sold or offered for sale to California consumers after the Compliance Date, and for which  
7 CEH has laboratory test results showing that the Covered Product has a Lead level exceeding the  
8 Reformulation Level, CEH may issue a Notice of Violation pursuant to this Section. Such Notice of  
9 Violation shall be based upon a test result sufficient to establish an exceedance of the Reformulation  
10 Level as it is to be evaluated under Section 2.3; the results employed shall also meet the sampling,  
11 preparation, testing and laboratory criteria specified under Section 2.3.

12 3.2.2 Service of Notice of Violation and Supporting Documentation.

13 3.2.2.1 Subject to Section 3.2.1, the Notice of Violation shall be sent to the  
14 person(s) identified in Section 7.2 to receive notices for Commercial Bakeries, and must be served  
15 within forty-five (45) days of the later of either the date the Covered Products at issue were purchased  
16 or otherwise acquired by CEH or the date that CEH learns that the Covered Products were  
17 manufactured or sold by Commercial Bakeries, provided, however, that: (i) CEH may have up to an  
18 additional 45 days to provide Commercial Bakeries with the test data required by Section 3.2.2.2  
19 below if it has not yet obtained such test data from its laboratory; and (ii) CEH may serve a Notice of  
20 Violation to a supplier of a Covered Product so long as (a) the identity of the supplier cannot be  
21 discerned from the labeling of the Covered Product, and (b) the Notice of Violation to the supplier is  
22 served within 45 days of the date the supplier is identified by CEH.

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

1 reports, quality assurance reports and quality control reports associated with testing of the Covered  
2 Products.

3           3.2.3    Notice of Election of Response. No more than thirty (30) days after  
4 effectuation of service of a Notice of Violation, Commercial Bakeries shall provide a written notice  
5 to CEH stating whether it elects to contest the allegations contained in the Notice of Violation  
6 (“Notice of Election”). Failure to provide a Notice of Election within thirty (30) days of effectuation  
7 of service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.

8           3.2.3.1 If a Notice of Violation is contested, the Notice of Election shall  
9 include all then-available documentary evidence regarding the alleged violation, including all  
10 available data of testing performed pursuant to this Consent Judgment. If Commercial Bakeries or  
11 CEH later acquires additional test or other data regarding the alleged violation, it shall notify the  
12 other party and promptly provide all such data or information to the party. Any test data used to  
13 contest a Notice of Violation shall meet the criteria of Section 2.3.

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

27           3.2.5    Non-Contested Matters. If Commercial Bakeries elects to not contest the  
28 allegations in a Notice of Violation and Commercial Bakeries did not manufacture the Covered



1 Product identified in the Notice of Violation, it shall identify on a confidential basis to CEH (by  
2 proper name, address of principal place of business and telephone number) the person or entity that  
3 sold the Covered Products to Commercial Bakeries and the manufacturer and other entities in the  
4 upstream chain of distribution of the Covered Product, provided that such information is reasonably  
5 available. In addition, Commercial Bakeries shall undertake corrective action and make payments, if  
6 any, as set forth below.

7 3.2.5.1 If the test data provided by CEH in support of the Notice of Violation  
8 shows that Lead content in a Covered Product is above the Reformulation Level but less than sixty  
9 (60) ppb, then Commercial Bakeries shall take the following corrective action and make the  
10 following payments, if any:

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

21 (b) If the Notice of Violation is the first Notice of Violation  
22 received by a Commercial Bakeries under Section 3.2.5.1 that was not successfully contested or  
23 withdrawn, no payment shall be required by that Commercial Bakeries. If the Notice of Violation is  
24 the second, third or fourth Notice of Violation received by Commercial Bakeries under Section  
25 3.2.5.1 that was not successfully contested or withdrawn, Commercial Bakeries shall pay \$5,000 for  
26 each Notice of Violation. If Commercial Bakeries has received more than four (4) Notices of  
27 Violation under Section 3.2.5.1 that were not successfully contested or withdrawn, Commercial  
28 Bakeries shall pay \$10,000 for each subsequent Notice of Violation. If Commercial Bakeries

1 produces with its Notice of Election test data from the manufacturer or supplier of the Covered  
2 Product that: (i) was conducted prior to the date CEH purchased the Covered Product that is the  
3 subject of the Notice of Violation; (ii) was conducted on the same Covered Product from the same  
4 production lot as the Covered Product that is the subject of the Notice of Violation; and (iii)  
5 demonstrates Lead levels below the Reformulation Level as evaluated under Section 2.3, then any  
6 payment under this Section shall be reduced by fifty percent (50%).

7 3.2.5.2 If the test data provided by CEH in support of the Notice of Violation  
8 reports a Lead content in a Covered Product of more than sixty (60) ppb, then Commercial Bakeries  
9 shall take the following corrective action and make the following payments:

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

26 (b) If the Notice of Violation is the first, second, third or fourth  
27 Notice of Violation received by Commercial Bakeries under Section 3.2.5.2 that was not successfully  
28 contested or withdrawn, Commercial Bakeries shall pay \$16,000 for each Notice of Violation. If

1 Commercial Bakeries has received more than four Notices of Violation under Section 3.2.5.2 that  
2 were not successfully contested or withdrawn, Commercial Bakeries shall pay \$24,000 for each  
3 Notice of Violation. If Commercial Bakeries produces with its Notice of Election test data on the  
4 Covered Product that: (i) was conducted prior to the date CEH purchased the Covered Product that is  
5 the subject of the Notice of Violation; (ii) was conducted on the same or same type of Covered  
6 Product; and (iii) demonstrates Lead levels below the Reformulation Level as evaluated under  
7 Section 2.3.4, then any payment under this Section shall be reduced by fifty percent.

8           3.2.6 Payments. Any payments under Section 3.2 shall be made by check  
9 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a Notice  
10 of Election triggering a payment and which shall be used as reimbursement for costs for  
11 investigating, preparing, sending and prosecuting Notices of Violation, and to reimburse attorneys’  
12 fees and costs incurred in connection with these activities.

13           3.3 **Repeat Violations**. If Commercial Bakeries has received four (4) or more Notices of  
14 Violation concerning the same type of Covered Product that were not successfully contested or  
15 withdrawn in any twelve (12) month period then, at CEH’s option, CEH may seek whatever fines,  
16 costs, penalties, attorneys’ fees or other remedies that are provided by law for failure to comply with  
17 the Consent Judgment. Prior to seeking such relief, CEH shall meet and confer with Commercial  
18 Bakeries for at least thirty (30) days to determine if Commercial Bakeries and CEH can agree on  
19 measures that Commercial Bakeries can undertake to prevent future violations.

20 **4. PAYMENTS**

21           4.1 **Payments by Commercial Bakeries**. Within five (5) days of the entry of this  
22 Consent Judgment, Commercial Bakeries shall pay the total sum of \$70,000 as a settlement payment,  
23 as further set forth in this Section 4.

24           4.2 **Allocation of Payments**. The total settlement amount for Commercial Bakeries shall  
25 be paid in four (4) separate checks and delivered as set forth below. Any failure by Commercial  
26 Bakeries to comply with the payment terms herein shall be subject to a stipulated late fee to be paid  
27 by Commercial Bakeries in the amount of \$100 for each day the full payment is not received after the  
28 due date set forth in Section 4.1. The late fees required under this Section shall be recoverable,

1 together with reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 3  
2 of this Consent Judgment. The funds paid by Commercial Bakeries shall be allocated as set forth  
3 below between the following categories and made payable as follows:

4 4.2.1 \$9,300 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).

5 The civil penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12  
6 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard  
7 Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment for \$6,975  
8 shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486.

9 This payment shall be delivered as follows:

10 For United States Postal Service Delivery:

11 Attn: Mike Gyurics  
12 Fiscal Operations Branch Chief  
13 Office of Environmental Health Hazard Assessment  
14 P.O. Box 4010, MS #19B  
15 Sacramento, CA 95812-4010

16 For Non-United States Postal Service Delivery:

17 Attn: Mike Gyurics  
18 Fiscal Operations Branch Chief  
19 Office of Environmental Health Hazard Assessment  
20 1001 I Street, MS #19B  
21 Sacramento, CA 95814

22 The CEH portion of the civil penalty payment for \$2,325 shall be made payable to the  
23 Center For Environmental Health and associated with taxpayer identification number 94-3251981.

24 This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
25 94117.

26 4.2.2 \$13,900 as a payment in lieu of additional civil penalty to CEH pursuant  
27 to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b).

28 CEH shall use such funds to continue its work educating and protecting people from exposures to  
toxic chemicals, including heavy metals. In addition, as part of its Community Environmental Action  
and Justice Fund, CEH will use four percent (4%) of such funds to award grants to grassroots  
environmental justice groups working to educate and protect people from exposures to toxic  
chemicals. The method of selection of such groups can be found at the CEH web site at

1 www.ceh.org/justicefund. The payment pursuant to this Section shall be made payable to the Center  
2 For Environmental Health and associated with taxpayer identification number 94-3251981. This  
3 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
4 94117.

5 4.2.3 \$46,800 as a reimbursement of a portion of CEH's reasonable attorneys'  
6 fees and costs. The attorneys' fees and cost reimbursement check shall be made payable to the  
7 Lexington Law Group and associated with taxpayer identification number 94-3317175. This  
8 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
9 94117.

## 10 **5. MODIFICATION AND DISPUTE RESOLUTION**

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

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

## 17 **6. CLAIMS COVERED AND RELEASE**

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

27 6.2 CEH, for itself, its agents, successors and assigns, releases, waives, and forever  
28 discharges any and all claims against Commercial Bakeries, Defendant Releasees, and Downstream

1 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or common  
2 law claims that have been or could have been asserted by CEH individually or in the public interest  
3 regarding the failure to warn about exposure to Lead arising in connection with Covered Products  
4 manufactured by or for Commercial Bakeries prior to the Compliance Date.

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

10 **7. PROVISION OF NOTICE**

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

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

18 7.2 When Commercial Bakeries is entitled to receive any notice under this Consent  
19 Judgment, the notice shall be sent by first class and electronic mail to:

20 Sarah Esmaili  
21 Arnold & Porter LLP  
22 3 Embarcadero Center, 10th Floor  
23 San Francisco, CA 94111  
24 sarah.esmaili@aporter.com

25 7.3 Any Party may modify the person and address to whom the notice is to be sent by  
26 sending the other Party notice by first class and electronic mail.

27 **8. COURT APPROVAL**

28 8.1 This Consent Judgment shall become effective as a contract upon the date signed by  
CEH and Commercial Bakeries, whichever is later, provided however, that CEH shall also prepare  
and file a Motion for Approval of this Consent Judgment and Commercial Bakeries shall support  
approval of such Motion.

1           8.2     If this Consent Judgment is not entered by the Court, it shall be of no force or effect  
2 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

3           **9.     GOVERNING LAW AND CONSTRUCTION**

4           9.1     The terms of this Consent Judgment shall be governed by the laws of the State of  
5 California.

6           **10.    ATTORNEYS' FEES**

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

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

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

19           **11.    ENTIRE AGREEMENT**

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

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

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

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

11 **13. RETENTION OF JURISDICTION**

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

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

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

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

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

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.  
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**IT IS SO ORDERED, ADJUDICATED,  
AND DECREED:**

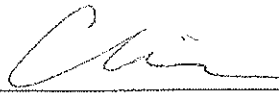
Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
Judge of the Superior Court of the State of California

**IT IS SO STIPULATED:**

Dated: 11 March, 2016

**CENTER FOR ENVIRONMENTAL HEALTH**

  
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Signature

CHARLIE P. ROMANO  
\_\_\_\_\_  
Printed Name

Associate Director  
\_\_\_\_\_  
Title

Dated: \_\_\_\_\_, 2016

**COMMERCIAL BAKERIES CORP.**

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**IT IS SO ORDERED, ADJUDICATED,  
AND DECREED:**

Dated: OCT - 4, 2016

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

**IT IS SO STIPULATED:**

Dated: \_\_\_\_\_, 2016

**CENTER FOR ENVIRONMENTAL HEALTH**

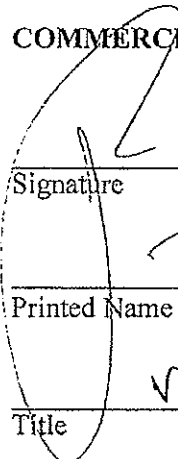
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Dated: FEB 29, 2016

**COMMERCIAL BAKERIES CORP.**

  
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PHILIP FUSCO  
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**EXHIBIT A**

**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.