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ENDORSED
FILED
ALAMEDA COUNTY

DEC - 1 2015

CLERK OF THE SUPERIOR COURT
By WOLANDA 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 SPECIALTY'S CAFE & BAKERY,
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 Specialty’s Cafe & Bakery, Inc. (“Specialty’s”).
4 The Parties enter into this Consent Judgment to settle certain claims asserted by CEH against
5 Specialty’s as set forth in the operative complaint (“Complaint”) in the above-captioned matter.
6 This Consent Judgment covers cookies containing molasses, ginger, or both molasses and ginger
7 sold by Specialty’s that have been or will be sold or offered for sale to California consumers
8 (“Covered Products”).

9 1.2 On February 27, 2015, CEH provided a 60-day Notice of Violation under
10 Proposition 65 to the California Attorney General, the District Attorneys of every county in
11 California, the City Attorneys of every California city with a population greater than 750,000 and
12 Specialty’s, alleging that Specialty’s 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 Specialty’s is a corporation or other business entity that manufactures, distributes,
16 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,
18 and on August 3, 2015, CEH filed the Second Amended Complaint. The Second Amended
19 Complaint names Specialty’s as a defendant.

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

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
2 of law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive
3 or impair any right, remedy, argument or defense the Parties may have in any other pending or
4 future legal proceedings. This Consent Judgment is the product of negotiation and compromise and
5 is accepted by the Parties solely for purposes of settling, compromising, and resolving issues
6 disputed 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 Specialty's purchases any
10 Covered Products from a third party that is not under common ownership (a "Covered Product
11 Supplier"), it shall provide the Reformulation Level set forth in Section 2.2 to each Covered Product
12 Supplier and shall instruct each such Covered Product Supplier to provide it with Covered Products
13 that comply with the Reformulation Level set forth in Section 2.2. If in the future Specialty's
14 purchases Covered Products from a Covered Product Supplier that it has not previously provided
15 with instructions regarding the Reformulation Level set forth in Section 2.2, Specialty's shall
16 provide the Reformulation Level set forth in Section 2.2 to such Covered Product Supplier prior to
17 placing an initial order for Covered Products and instruct the Covered Product Supplier to provide it
18 with Covered Products that comply with the Reformulation Level set forth in Section 2.2.
19 Specialty's shall retain and make available to CEH upon reasonable written request records of
20 communications sent to and received from Covered Product Suppliers that are related to the
21 requirement of this Section 2.1 for a period of five (5) years from the date of entry of this Consent
22 Judgment (the "Effective Date").

23 **2.2 Reformulation of Covered Products.** After the Effective Date, Specialty's shall
24 not sell or offer for sale any Covered Product that will be offered for sale to California consumers
25 that contains more than thirty (30) parts per billion ("ppb") Lead by weight (the "Reformulation
26 Level"), such concentration to be determined by use of a test performed by an accredited laboratory
27 using inductively coupled plasma mass spectrometry (ICP-MS) equipment with a level of detection
28 of at least ten (10) ppb.

1 2.3 **Testing.** Except as provided in Section 2.5, to ensure compliance with Section 2.2,
2 Specialty's shall conduct random testing of Covered Products and take the follow-up actions
3 described in this section ("Validation Testing").

4 2.3.1 Covered Products To Be Tested. Validation Testing shall be performed
5 on a quarterly basis for each "type" of Covered Product that will be offered for sale in California.
6 Such Validation Testing shall be performed on samples drawn randomly from single production lots
7 of each "type" of Covered Product manufactured during that quarter. For purposes of this Consent
8 Judgment a "type" of a Covered Product is either each individual SKU of Covered Products or a
9 group of Covered Products which CEH and Specialty's have agreed in writing has materially the
10 same characteristics based on the type, supplier and amount of ginger or molasses used in its recipe
11 or formula.

12 2.3.2 Methods of Testing. Specialty's shall conduct Validation Testing
13 pursuant to one of the following methods: (1) the FDA sample preparation protocol discussed in the
14 method entitled "Elemental Analysis Manual: Section 4.4 Inductively Coupled Plasma-Atomic
15 Emission Spectrometric Determination of Elements in Food Using Microwave Assisted Digestion"¹
16 or (2) a microwave- or heat-assisted acid digestion method employing high-purity reagents. In
17 either event, the laboratory shall digest at least 0.5 grams of each sample taken from a properly
18 homogenized random selection of a complete package of a Covered Product from a particular
19 production lot, and shall analyze each such sample without further dilution using ICP-MS and with
20 an instrument quantitation limit corresponding to less than three (3) micrograms of Lead in the
21 finished product.

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,
25 Environmental Laboratory Accreditation Program; NSF International; American Association for
26 Laboratory Accreditation for Chemical Testing; International Standards Organization/IEC via

27 ¹ 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 ANSI-ASQ; or an in-house laboratory or other facility experienced in testing for lead levels in foods
2 that complies with the Production and Process Control System; Requirements for Laboratory
3 Operations set forth in 21 C.F.R. Part 111, Subpart J, including but not limited to the requirements
4 for written procedures, requirements for laboratory control processes, requirements for laboratory
5 methods and examination, record retention policies, and other laboratory requirements.

6 Laboratories deemed to meet these requirements are listed on Exhibit A.

7 2.3.4 Duration of Testing. In the event that the Validation Testing
8 demonstrates compliance with the Reformulation Level by Specialty's for six (6) continuous
9 quarters in which production of a type of Covered Product has occurred, Specialty's may send
10 written 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 Specialty's
13 shall arrange for testing for a minimum of three consecutive production quarters after that change.

14 2.3.5 Covered Products That Exceed Reformulation Level. If a Validation
15 Testing result indicates that a type of a Covered Product exceeds the Reformulation Level,
16 Specialty's shall ensure that all Covered Products from the same production lot as those from which
17 the sample of the Covered Product(s) that exceeded the Reformulation Level were drawn as well as
18 other lots of the same type of Covered Product produced in the same calendar quarter that were not
19 directly subject to Validation Testing (the "Non-Compliant Products") will not be sold or offered
20 for sale to California consumers.

21 2.3.5.1 Notwithstanding the foregoing, if the results of Validation Testing of
22 a sample of a type of Covered Product exceeds the Reformulation Level, Specialty's may collect up
23 to three (3) more samples of the Covered Product from the same production lot and have those
24 samples tested in accordance with Section 2.3. If the results of Validation Testing of all of the
25 additional samples of a type of Covered Product collectively yield an arithmetic mean of no more
26 than thirty (30) ppb Lead by weight, Specialty's may treat that type of Covered Product as meeting
27 the Reformulation Level for that Validation Testing cycle as long as no result for a sample exceeds
28 fifty (50) ppb Lead. If a sample result exceeds fifty (50) ppb Lead, Specialty's may collect three (3)

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

6 2.3.6 Records. The testing reports and results of the Validation Testing
7 performed pursuant to this Consent Judgment shall be retained by Specialty's for four (4) years and
8 made available to CEH upon reasonable request.

9 2.4 **Good Faith Commitment to Pursue Further Lead Reduction**. Except as
10 provided in Section 2.5, Specialty's shall continue to take, or cause to be taken, good faith and
11 commercially reasonable efforts to further reduce the Lead content of its Covered Products with a
12 goal of Covered Products having a consistent Lead content of seventeen (17) ppb or less. These
13 efforts shall include, at a minimum, efforts to further adjust recipes and formulas that will reduce
14 Lead content in Covered Products and attempts to secure Covered Product ingredients such as
15 molasses and ginger with lower Lead content. Within fifteen (15) days of the Effective Date, and
16 annually thereafter for two (2) more years, Specialty's shall submit to CEH a written report of the
17 activities it has undertaken to effectuate its good faith commitment under this paragraph. If
18 Specialty's has test results demonstrating that all of its Covered Products have a consistent Lead
19 content of seventeen (17) ppb or less and it provides such documentation to CEH, or if CEH and
20 Specialty's otherwise agree in writing, then Specialty's need not submit any subsequent annual
21 report to CEH pursuant to this paragraph.

22 2.5 **Products Not Subject to Testing**. The requirements of Sections 2.3 and 2.4 shall
23 not apply to any type of Covered Product for which CEH and Specialty's agree in writing that such
24 sections shall not apply.

25 **3. ENFORCEMENT**

26 3.1 **General Enforcement Provisions**. CEH may, by motion or application for an order
27 to show cause before this Court, enforce the terms and conditions contained in this Consent
28 Judgment. Any action to enforce alleged violations of Section 2.2 by Specialty's shall be brought

1 exclusively pursuant to this Section 3, and be subject to the meet and confer requirement of Section
2 3.2.4 if it is applicable.

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

11 3.2.2 Service of Notice of Violation and Supporting Documentation.

12 3.2.2.1 Subject to Section 3.2.1, the Notice of Violation shall be sent to the
13 person(s) identified in Section 7.2 to receive notices for Specialty's, and must be served within
14 forty-five (45) days of the date the Covered Products at issue were purchased or otherwise acquired
15 by CEH, provided, however, that CEH may have up to an additional forty-five (45) days to send the
16 Notice of Violation if, notwithstanding CEH's good faith efforts, the test data required by Section
17 3.2.2.2 below cannot be obtained by CEH from its laboratory before expiration of the initial forty-
18 five (45) day period.

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

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

1 Failure to provide a Notice of Election within thirty (30) days of effectuation of service of a Notice
2 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 shall
4 include all then-available documentary evidence regarding the alleged violation, including all
5 available test data. If Specialty's or CEH later acquires additional test or other data regarding the
6 alleged violation, it shall notify the other party and promptly provide all such data or information to
7 the party. Any test data used to contest a Notice of Violation shall meet the criteria of Section 2.3.

8 3.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and
9 Specialty's shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of
10 serving a Notice of Election contesting a Notice of Violation, and if no enforcement action or
11 application has been filed by CEH pursuant to Section 3.1, Specialty's may withdraw the original
12 Notice of Election contesting the violation and serve a new Notice of Election to not contest the
13 violation, provided, however, that, in this circumstance, Specialty's shall pay \$2,500 in addition to
14 any payment required under this Consent Judgment. At any time, CEH may withdraw a Notice of
15 Violation, in which case for purposes of this Section 3.2 the result shall be as if CEH never issued
16 any such Notice of Violation. If no informal resolution of a Notice of Violation results within thirty
17 (30) days of a Notice of Election to contest, CEH may file an enforcement motion or application
18 pursuant to Section 3.1. In any such proceeding, CEH may seek whatever fines, costs, penalties,
19 attorneys' fees or other remedies are provided by law for failure to comply with the Consent
20 Judgment.

21 3.2.5 Non-Contested Matters. If Specialty's elects to not contest the
22 allegations in a Notice of Violation and Specialty's did not manufacture the Covered Product
23 identified in the Notice of Violation, it shall identify on a confidential basis to CEH (by proper
24 name, address of principal place of business and telephone number) the person or entity that sold
25 the Covered Products to Specialty's and the manufacturer and other entities in the upstream chain of
26 distribution of the Covered Product, provided that such information is reasonably available. In
27 addition, Specialty's shall undertake corrective action and make payments, if any, as set forth
28 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 Specialty's shall take the following corrective action and make the
4 following payments, if any:

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

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

1 3.2.5.2 If the test data provided by CEH in support of the Notice of
2 Violation reports a Lead content in a Covered Product of more than sixty (60) ppb, then the
3 Specialty's shall take the following corrective action and make the following payments:

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

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

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

13 **4. PAYMENTS**

14 4.1 **Payments by Specialty’s**. Within five (5) days of the entry of this Consent
15 Judgment, Specialty’s shall pay the total sum of \$47,000 as a settlement payment, as further set
16 forth in this Section 4.

17 4.2 **Allocation of Payments**. The total settlement amount for Specialty’s shall be paid
18 in four (4) separate checks and delivered as set forth below. Any failure by Specialty’s to comply
19 with the payment terms herein shall be subject to a stipulated late fee to be paid by Specialty’s in
20 the amount of \$100 for each day the full payment is not received after the due date set forth in
21 Section 4.1. The late fees required under this Section shall be recoverable, together with reasonable
22 attorneys’ fees, in an enforcement proceeding brought pursuant to Section 3 of this Consent
23 Judgment. The funds paid by Specialty’s shall be allocated as set forth below between the
24 following categories and made payable as follows:

25 4.2.1 A civil penalty pursuant to Health & Safety Code § 25249.7(b) in the
26 total amount of \$6,200. The civil penalty payment shall be apportioned in accordance with Health
27 & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of
28 Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of the

1 civil penalty payment for \$4,650 shall be made payable to OEHHA and associated with taxpayer
2 identification number 68-0284486. This 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 for \$1,550 shall be made
16 payable to the Center For Environmental Health and associated with taxpayer identification number
17 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
18 Francisco, CA 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) in the total amount of
21 \$9,300. CEH shall use such funds to continue its work educating and protecting people from
22 exposures to toxic chemicals, including heavy metals. In addition, as part of its Community
23 Environmental Action and Justice Fund, CEH will use four percent (4%) of such funds to award
24 grants to grassroots environmental justice groups working to educate and protect people from
25 exposures to toxic chemicals. The method of selection of such groups can be found at the CEH web
26 site at www.ceh.org/justicefund. The payment pursuant to this Section shall be made payable to the
27 Center For Environmental Health and associated with taxpayer identification number 94-3251981.
28 This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,
CA 94117.

4.2.3 A reimbursement of a portion of CEH's reasonable attorneys' fees and
costs in the total amount of \$31,500. The attorneys' fees and cost reimbursement check shall be
made payable to the Lexington Law Group and associated with taxpayer identification number 94-

1 3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
2 Francisco, CA 94117.

3 **5. MODIFICATION AND DISPUTE RESOLUTION**

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

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

10 **6. CLAIMS COVERED AND RELEASE**

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

20 6.2 CEH, for itself, its agents, successors and assigns, releases, waives, and forever
21 discharges any and all claims against Specialty's, Defendant Releasees, and Downstream Defendant
22 Releasees arising from any violation of Proposition 65 or any other statutory or common law claims
23 that have been or could have been asserted by CEH individually or in the public interest regarding
24 the failure to warn about exposure to Lead arising in connection with Covered Products
25 manufactured by or for Specialty's prior to the Effective Date.

26 6.3 Compliance with the terms of this Consent Judgment by Specialty's shall constitute
27 compliance with Proposition 65 by Specialty's, its Defendant Releasees and its Downstream
28

1 Defendant Releasees with respect to any alleged failure to warn about Lead in Covered Products
2 manufactured, distributed or sold by Specialty's after the Effective Date.

3 **7. PROVISION OF NOTICE**

4 7.1 When CEH is entitled to receive any notice under this Consent Judgment, the notice
5 shall be sent by first class and electronic mail to:

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

11 7.2 When Specialty's is entitled to receive any notice under this Consent Judgment, the
12 notice shall be sent by first class and electronic mail to:

13 Patrick S. Thompson
14 Goodwin Proctor LLP
15 3 Embarcadero Center, 24th Floor
16 San Francisco, CA 94111
17 pthompson@goodwinproctor.com

18 7.3 Any Party may modify the person and address to whom the notice is to be sent by
19 sending the other Party notice by first class and electronic mail.

20 **8. COURT APPROVAL**

21 8.1 This Consent Judgment shall become effective as a contract upon the date signed by
22 CEH and Specialty's, whichever is later, provided however, that CEH shall also prepare and file a
23 Motion for Approval of this Consent Judgment and Specialty's shall support approval of such
24 Motion.

25 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
26 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

27 **9. GOVERNING LAW AND CONSTRUCTION**

28 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
California.

10. ATTORNEYS' FEES

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

26 **12. RETENTION OF JURISDICTION**

27 12.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent
28 Judgment.

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13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

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

14. NO EFFECT ON OTHER SETTLEMENTS

14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim against an entity that is not a Specialty's on terms that are different than those contained in this Consent Judgment.

15. EXECUTION IN COUNTERPARTS

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

IT IS SO ORDERED, ADJUDGED, AND DECREED:


Dated: DEC - 1 2015, 2015

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

IT IS SO STIPULATED:

Dated: Oct 2, 2015

CENTER FOR ENVIRONMENTAL HEALTH


Signature

Caroline P. ...
Printed Name

Associate Director
Title

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Dated: _____, 2015

SPECIALTY'S CAFE & BAKERY, INC.



Signature

Randall Niemeyer

Printed Name

CFO

Title

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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.