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**ENDORSED  
FILED  
ALAMEDA COUNTY**

DEC 03 2019

CLERK OF THE SUPERIOR COURT

By *Deborah L. Bayman*  
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
ENJOY LIFE NATURAL BRANDS, LLC, *et* )  
*al.*, )  
 )  
Defendants. )

Case No. RG 17-872866  
~~PROPOSED~~ CONSENT JUDGMENT  
AS TO KELLOGG USA LLC, AS  
SUCCESSOR TO KELLOGG USA  
INC.; KELLOGG SALES COMPANY;  
AND MURRAY BISCUIT COMPANY,  
L.L.C.

**1. DEFINITIONS**

1.1 “Animal Cookies” means Mother’s Circus Animal Cookies, Keebler Animal Cookies, and other like products made with substantially similar ingredients and cooking processes.

1.2 “Animal Crackers” means Keebler Animal Crackers and other like products made with substantially similar ingredients and cooking processes, but does not include Austin Zoo Animal Crackers.

1.3 “Applicable Compliance Dates” shall mean the dates indicated in Exhibit A as to each type of Covered Product.

1           1.4     The “Complaint” means the operative First Amended Complaint in the above-  
2 captioned matter.

3           1.5     “Covered Products” means Animal Cookies, Animal Crackers, and Ginger Snap  
4 Cookies manufactured, distributed, or sold by any of the Settling Defendants that have been or will  
5 be offered for sale to California consumers. “Covered Products” does not include Austin Zoo  
6 Animal Crackers. An initial list of the Covered Products by product type is attached hereto as  
7 Exhibit A.

8           1.6     “Effective Date” means the date on which notice of entry of this Consent Judgment  
9 by the Court is served upon Settling Defendants.

10          1.7     “Ginger Snap Cookies” means Murray Ginger Snaps and other like products made  
11 with substantially similar ingredients and cooking processes.

## 12     **2.     INTRODUCTION**

13          2.1     The Parties to this Consent Judgment are the Center for Environmental Health, a  
14 California non-profit corporation (“CEH”), on the one hand, and Kellogg USA LLC, as successor to  
15 Kellogg USA Inc.; Kellogg Sales Company; and Murray Biscuit Company, L.L.C. (collectively,  
16 “Settling Defendants”), on the other hand. CEH and Settling Defendants (the “Parties”) enter into  
17 this Consent Judgment to settle certain claims asserted by CEH against Settling Defendants as set  
18 forth in the Complaint.

19          2.2     More than 60 days prior to entry of this Consent Judgment, CEH provided a 60-day  
20 Notice of Violation of Proposition 65 to the California Attorney General, the District Attorneys of  
21 every county in California, the City Attorneys of every California city with a population greater  
22 than 750,000, and to Settling Defendants, alleging that Settling Defendants violated Proposition 65  
23 by exposing persons in California to acrylamide contained in Covered Products without first  
24 providing a clear and reasonable Proposition 65 warning (the “Notices”).

25          2.3     Each Settling Defendant is a corporation or other business entity that manufactures,  
26 distributes, sells, or offers for sale Covered Products that are sold in the State of California or has  
27 done so at times relevant to the Complaint.

28     ///

1           2.4     On August 24, 2017, CEH filed the original complaint in the above-captioned matter.  
2 On October 18, 2017, CEH filed the Complaint, which named Settling Defendants as defendants.  
3 Upon entry of this Consent Judgment, the Complaint shall be deemed amended such that the term  
4 “Products” as to Settling Defendants only means Covered Products.

5           2.5     For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
6 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
7 over Settling Defendants as to the acts alleged in the Complaint, that venue is proper in the County  
8 of Alameda, and that this Court has jurisdiction to enter and enforce this Consent Judgment as a full  
9 and final resolution of all claims which were or could have been raised in the Complaint based on  
10 the facts alleged therein and in the Notices with respect to Covered Products manufactured,  
11 distributed, and/or sold by Settling Defendants.

12           2.6     Nothing in this Consent Judgment is or shall be construed as an admission by the  
13 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with  
14 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
15 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
16 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any  
17 other pending or future legal proceedings. This Consent Judgment is the product of negotiation and  
18 compromise and is accepted by the Parties solely for purposes of settling, compromising, and  
19 resolving issues disputed in this action.

20 **3.     INJUNCTIVE RELIEF**

21           3.1     **Reformulation of Covered Products.** Commencing on the Applicable Compliance  
22 Dates, Settling Defendants shall not manufacture or purchase from another entity for resale any  
23 Covered Product that will thereafter be sold or offered for sale in California that exceed the  
24 following acrylamide concentration levels (the “Reformulation Levels”), as determined by use of a  
25 test performed by an accredited laboratory using either GC/MS (Gas Chromatograph/Mass  
26 Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), or any other testing  
27 method agreed upon by the Parties:

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1                   3.1.1     **Average Levels.** The average acrylamide concentration shall not exceed

2                   3.1.1.1     For Animal Cookies: 100 parts per billion (“ppb”) by weight;

3                   3.1.1.2     For Animal Crackers: 75 ppb by weight; and

4                   3.1.1.3     For Ginger Snap Cookies: 281 ppb by weight.

5                   The Average Level is determined by randomly selecting and testing at least one sample each  
6 from at least five and up to 30 different lots of a particular Covered Product. The mean and  
7 standard deviation shall be calculated using the sampling data. Any data points that are more than  
8 three standard deviations outside the mean shall be discarded, and the mean and standard deviation  
9 recalculated once using the remaining data points. The mean determined in accordance with this  
10 procedure shall be deemed the “Average Level.”

11                   3.1.2     **Unit Levels.** The acrylamide concentration of any individual unit of  
12 Covered Product (the “Unit Level”) shall not exceed:

13                   3.1.2.1     For Animal Cookies: 125 ppb by weight;

14                   3.1.2.2     For Animal Crackers 100 ppb by weight; and

15                   3.1.2.3     For Ginger Snap Cookies: 300 ppb by weight.

16                   The Unit Level shall be determined based on a representative composite sample taken from the  
17 individual unit (carton or other container) being tested.

#### 18     **4.     ENFORCEMENT**

19                   4.1     **General Enforcement Provisions.** CEH may, by motion or application for an order  
20 to show cause before this Court, enforce the terms and conditions contained in this Consent  
21 Judgment. Any action to enforce alleged violations of Section 3.1 by Settling Defendants shall be  
22 brought exclusively pursuant to this Section 4, and be subject to the meet and confer requirement of  
23 Section 4.2.4 if applicable.

#### 24                   **4.2     Enforcement of Reformulation Commitment.**

25                   4.2.1     Notice of Violation. In the event that CEH purchases, either from a store in  
26 California or online and shipped to California, a randomly selected individual unit of a Covered  
27 Product that is sealed in its original packaging and that has a best-by or sell-by (or equivalent) date  
28 or other code that reflects that the Covered Product was manufactured on or after the Compliance

1 Date, and for which CEH has laboratory test results showing that the Covered Product exceeds the  
2 Unit Level, CEH may issue a Notice of Violation pursuant to this Section. CEH shall have the  
3 burden to prove any alleged violation of Section 3 of the Consent Judgment.

4 4.2.2 Service of Notice of Violation and Supporting Documentation.

5 4.2.2.1 The Notice of Violation shall be sent to the person(s) identified in  
6 Section 8.2 to receive notices for Settling Defendants, and must be served within sixty (60) days of  
7 the later of the date the Covered Product at issue was purchased or otherwise acquired by CEH or  
8 the date that CEH can reasonably determine that the Covered Product at issue was manufactured or  
9 sold by Settling Defendants, provided, however, that CEH may have up to an additional sixty (60)  
10 days to send the Notice of Violation if, notwithstanding CEH's good faith efforts, the test data  
11 required by Section 4.2.2.2 below cannot be obtained by CEH from its laboratory before expiration  
12 of the initial sixty (60) day period.

13 4.2.2.2 The Notice of Violation shall, at a minimum, set forth: (a) the date the  
14 Covered Product was purchased; (b) the location at which the Covered Product was purchased; (c) a  
15 description of the Covered Product giving rise to the alleged violation, including the name and  
16 address of the retail entity from which the sample was obtained and pictures of the product  
17 packaging from all sides, which identifies the product lot; and (d) all test data obtained by CEH  
18 regarding the Covered Product and supporting documentation sufficient for validation of the test  
19 results, including any laboratory reports, quality assurance reports, and quality control reports  
20 associated with testing of the Covered Product.

21 4.2.3 Notice of Election of Response. No more than sixty (60) days after  
22 effectuation of service of a Notice of Violation, Settling Defendants shall provide written notice to  
23 CEH whether they elect to contest the allegations contained in a Notice of Violation ("Notice of  
24 Election"). Failure to provide a Notice of Election within sixty (60) days of effectuation of service  
25 of a Notice of Violation shall be deemed an election to contest the Notice of Violation. Upon notice  
26 to CEH, Settling Defendants may have up to an additional sixty (60) days to elect if,  
27 notwithstanding Settling Defendants' good faith efforts, Settling Defendants are unable to verify the  
28 test data provided by CEH before expiration of the initial sixty (60) day period.

1                   4.2.3.1     If a Notice of Violation is contested, the Notice of Election shall  
2 include all documents upon which Settling Defendants are relying to contest the alleged violation,  
3 including all available non-privileged test data. If Settling Defendants or CEH later acquire  
4 additional non-privileged testing or other data regarding the alleged violation during the meet and  
5 confer period described in Section 4.2.4, they shall notify the other Party and promptly provide all  
6 such non-privileged data or information to the Party unless either the Notice of Violation or Notice  
7 of Election has been withdrawn.

8                   4.2.4     Meet and Confer. If a Notice of Violation is contested, CEH and Settling  
9 Defendants 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, Settling Defendants may withdraw the  
11 original Notice of Election contesting the violation and serve a new Notice of Election to not  
12 contest the violation, provided, however, that, in this circumstance, Settling Defendants shall pay  
13 \$2,500 in addition to any other payment required under this Consent Judgment. At any time, CEH  
14 may withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the result shall  
15 be as if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of  
16 Violation results within thirty (30) days of a Notice of Election to contest, CEH may file an  
17 enforcement motion or application pursuant to Section 4.1. The parties may extend this thirty (30)  
18 day time period by stipulation. In any such proceeding, CEH may seek whatever fines, costs,  
19 penalties, attorneys' fees, or other remedies are provided by law for failure to comply with the  
20 Consent Judgment.

21                   4.2.5     Non-Contested Notices. If Settling Defendants elect to not contest the  
22 allegations in a Notice of Violation, they shall undertake corrective action(s) and make payments, if  
23 any, as set forth below.

24                   4.2.5.1     Settling Defendants shall include in their Notice of Election a detailed  
25 description with supporting documentation of the corrective action(s) that they have undertaken or  
26 propose to undertake to address the alleged violation. Any such correction shall, at a minimum,  
27 provide reasonable assurance that all Covered Products having the same lot number as that of the  
28 Covered Product identified in CEH's Notice of Violation (the "Noticed Covered Products") will not

1 thereafter be sold or offered for sale in California. Settling Defendants shall make available to CEH  
2 for inspection and copying records of non-privileged correspondence sufficient to show market  
3 withdrawal of the Noticed Covered Products to the extent it has such documents on file. If the  
4 Notice of Violation is based on a violation of the Unit Level with respect to a single Covered  
5 Product, Settling Defendants will be excused from any corrective action obligation if Settling  
6 Defendants produce test results or other evidence showing that the Noticed Covered Products  
7 comply with the applicable Average Level specified in Section 3.1.1. However, to avail itself of  
8 this provision, Settling Defendants must provide CEH with all non-privileged acrylamide test data  
9 in their possession, custody or control pertaining to the type of Covered Product at issue in the  
10 Notice of Violation that was performed since either the Effective Date or within the year prior to  
11 Settling Defendants producing test results to CEH under this Section 4.2.5.1, whichever is the  
12 shorter period. If there is a dispute over whether Settling Defendants are excused from the  
13 corrective action, or over the sufficiency of any corrective action taken by Settling Defendants,  
14 Settling Defendants and CEH shall meet and confer before seeking any remedy in court.

15           4.2.5.2    If the Notice of Violation is the first, second, third, or fourth Notice of  
16 Violation received by Settling Defendants under Section 4.2.1 that was not successfully contested or  
17 withdrawn, then Settling Defendants shall pay \$15,000 for each Notice of Violation. If Settling  
18 Defendants have received more than four (4) Notices of Violation under Section 4.2.1 that were not  
19 successfully contested or withdrawn, then Settling Defendants shall pay \$25,000 for each  
20 subsequent Notice of Violation that is not successfully contested or withdrawn. If Settling  
21 Defendants produce with their Notice of Election test data for the specific SKU, or comparative like  
22 items, that reasonably demonstrates predicted acrylamide levels below the applicable Unit Level,  
23 then any payment under this Section shall be reduced by 100 percent (100%) for the first Notice of  
24 Violation, by seventy-five percent (75%) for the second Notice of Violation, and by fifty percent  
25 (50%) for any subsequent Notice of Violation. If Settling Defendants are excused from corrective  
26 action under Section 4.2.5.1, then Settling Defendants shall pay \$2,500 for that Notice of Violation.  
27 In no case shall Settling Defendants be obligated to pay more than \$100,000 for all Notices of

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1 Violation not successfully contested or withdrawn in any calendar year irrespective of the total  
2 number of Notices of Violation issued.

3 4.2.6 In no case shall CEH issue more than one Notice of Violation per  
4 manufacturing lot of a type of Covered Product. CEH shall be limited to issuing no more than two  
5 total Notices of Violation to Settling Defendants in the initial 365 days following the Applicable  
6 Compliance Dates for each type of Covered Product.

7 4.2.7 Payments. Any payments under Section 4.2 shall be made by check  
8 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a  
9 Notice of Election triggering a payment and shall be used as reimbursement for costs for  
10 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse attorneys’  
11 fees and costs incurred in connection with these activities, and shall be the extent of all monetary  
12 remedies available to CEH under this Consent Judgment for a non-contested Notice of Violation.

13 4.3 **Repeat Violations.** If Settling Defendants have received five (5) or more Notices of  
14 Violation concerning the same type of Covered Product that were not successfully contested or  
15 withdrawn in any two (2) year period then, at CEH’s option, CEH may seek whatever fines, costs,  
16 penalties, attorneys’ fees, or other remedies that are provided by law for failure to comply with the  
17 Consent Judgment. Prior to seeking such relief, CEH shall meet and confer with Settling  
18 Defendants for at least thirty (30) days to determine if Settling Defendants and CEH can agree on  
19 measures that Settling Defendants can undertake to prevent future alleged violations.

## 20 **5. PAYMENTS**

21 5.1 **Payments by Settling Defendants.** Within twenty (20) calendar days of the  
22 Effective Date but no earlier than August 15, 2019, Settling Defendants or the entity that acquires  
23 the brands of the Covered Products if the acquisition occurs prior to this time (the “Acquiring  
24 Entity”) shall pay the total sum of \$195,000 as a settlement payment as further set forth in this  
25 Section.

26 5.2 **Allocation of Payments.** The total settlement amount shall be paid in four (4)  
27 separate checks in the amounts specified below and delivered as set forth below. Any failure by  
28 Settling Defendants or Acquiring Entity to comply with the payment terms herein shall be subject to



1 a stipulated late fee to be paid by Settling Defendants or Acquiring Entity to CEH in the amount of  
2 \$100 for each day the full payment is not received after the payment due date set forth in Section  
3 5.1. The late fees required under this Section shall be recoverable, together with reasonable  
4 attorneys' fees, in an enforcement proceeding brought pursuant to Section 4 of this Consent  
5 Judgment. The funds paid by Settling Defendants or Acquiring Entity shall be allocated as set forth  
6 below between the following categories and made payable as follows:

7 5.2.1 \$34,190 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).

8 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §  
9 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health  
10 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment  
11 for \$25,642.50 shall be made payable to OEHHA and associated with taxpayer identification  
12 number 68-0284486. This payment shall be delivered as follows:

13 For United States Postal Service Delivery:

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

20 For Non-United States Postal Service Delivery:

21  
22 Attn: Mike Gyurics  
23 Fiscal Operations Branch Chief  
24 Office of Environmental Health Hazard Assessment  
25 1001 I Street, MS #19B  
26 Sacramento, CA 95814

27 The CEH portion of the civil penalty payment for \$8,547.50 shall be made payable to the Center for  
28 Environmental Health and associated with taxpayer identification number 94-3251981. This  
payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
94117.

5.2.2 \$25,640 as an Additional Settlement Payment ("ASP") to CEH pursuant to  
Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH  
intends to restrict use of the ASPs received from this Consent Judgment to the following purposes:

1 the funds will be placed in CEH's Toxics in Food Fund and used to support CEH programs and  
2 activities that seek to educate the public about acrylamide and other toxic chemicals in food, to  
3 work with the food industry and agriculture interests to reduce exposure to acrylamide and other  
4 toxic chemicals in food, and to thereby reduce the public health impacts and risks of exposure to  
5 acrylamide and other toxic chemicals in food sold in California. CEH shall obtain and maintain  
6 adequate records to document that ASPs are spent on these activities and CEH agrees to provide  
7 such documentation to the Attorney General within thirty (30) days of any request from the  
8 Attorney General. The payment pursuant to this Section shall be made payable to the Center for  
9 Environmental Health and associated with taxpayer identification number 94-3251981. This  
10 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
11 94117.

12           5.2.3     \$135,170 as a reimbursement of a portion of CEH's reasonable attorneys'  
13 fees and costs. The attorneys' fees and cost reimbursement shall be payable to the Lexington Law  
14 Group and associated with taxpayer identification number 94-3317175. This payment shall be  
15 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

16           5.3     **Joint and Several But Singular Obligation.** Any payment required to be made by  
17 Settling Defendants or Acquiring Entity under Section 4 or Section 5 of this Consent Judgment shall  
18 be a joint and several but singular obligation of Kellogg USA Inc., Kellogg Sales Company, Murray  
19 Biscuit Company, LLC, and Acquiring Entity such that any payment need only be paid once,  
20 whether from Kellogg USA Inc., Kellogg Sales Company, Murray Biscuit Company, L.L.C., or  
21 Acquiring Entity, or by one or more companies contributing a share of each payment.

## 22     **6.     MODIFICATION AND DISPUTE RESOLUTION**

23           6.1     **Modification.** This Consent Judgment may be modified from time to time by  
24 express written agreement of the Parties, with the approval of the Court, or by an order of this Court  
25 upon motion and in accordance with law.

26           6.2     **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
27 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to modify

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1 the Consent Judgment. To initiate the meet and confer, the Party seeking modification shall issue  
2 written notice to the other Party.

3           **6.3 Change in Proposition 65.** If Proposition 65 or its implementing regulations  
4 (including but not limited to the “safe harbor no significant risk level” for acrylamide set forth at  
5 Cal. Code Regs., tit. 27, section 25705, subdivision (c)(2)) are changed from their terms as they  
6 exist on the date of entry of this Consent Judgment in a manner that impacts the Reformulation  
7 Levels, then this Consent Judgment may be modified to relieve Settling Defendants of their  
8 obligations with respect to such portion of the Covered Products as is appropriate. The Parties  
9 recognize that the Reformulation Levels are based on a compromise of a number of issues, and that  
10 a change to the “safe harbor no significant risk level” for acrylamide would not necessarily entitle a  
11 Party to a modification of the terms of this Consent Judgment corresponding in a linear relationship  
12 with such a change.

13           **6.4 Federal Preemption.** If an agency of the federal government, including but not  
14 limited to the U.S. Food and Drug Administration (“FDA”), states through any official  
15 communication, regulation or legally binding act that federal law has preemptive effect on any of  
16 the requirements of this Consent Judgment, then this Consent Judgment may be modified to bring it  
17 into compliance with or avoid conflict with federal law, but the modification shall not be granted  
18 unless this Court concludes, in a final judgment or order, that such modification is necessary to  
19 bring this Consent Judgment into compliance with or avoid conflict with federal law.

20           **6.5** If a court of competent jurisdiction renders a final decision that Proposition 65 warnings  
21 for acrylamide exposures on products that are the same type as the Covered Products are preempted  
22 or are unconstitutional, then this Consent Judgment may be modified to bring it into compliance with  
23 or avoid conflict with that decision, but the modification shall not be granted unless this Court  
24 concludes, in a final judgment or order, that such modification is necessary to bring this Consent  
25 Judgment into compliance with or avoid conflict with that decision.

## 26 **7. CLAIMS COVERED AND RELEASE**

27           **7.1** Provided that Settling Defendants comply in full with their obligations under Section  
28 5 hereof, this Consent Judgment is a full, final and binding resolution between CEH on behalf of

1 itself and the public interest and Settling Defendants and their parents, subsidiaries, affiliated  
2 entities that are under common ownership, directors, officers, employees, agents, shareholders,  
3 successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which Settling  
4 Defendants directly or indirectly distribute or sell Covered Products, including but not limited to  
5 distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees (“Downstream  
6 Defendant Releasees”), of any violation of Proposition 65 based on failure to warn about alleged  
7 exposure to acrylamide contained in Covered Products that were manufactured by Settling  
8 Defendants prior to the Applicable Compliance Date as to each type of Covered Product.

9           7.2     Provided that Settling Defendants comply in full with their obligations under Section  
10 5 hereof, CEH, for itself, its agents, successors and assigns, releases, waives, and forever discharges  
11 any and all claims against Settling Defendants, Defendant Releasees, and Downstream Defendant  
12 Releasees arising from any violation of Proposition 65 or any other statutory or common law claims  
13 that have been or could have been asserted by CEH individually or in the public interest regarding  
14 the failure to warn about exposure to acrylamide arising in connection with Covered Products  
15 manufactured or purchased for resale by Settling Defendants prior to the Applicable Compliance  
16 Date as to each type of Covered Product.

17           7.3     Provided that Settling Defendants comply in full with their obligations under Section  
18 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendants shall  
19 constitute compliance with Proposition 65 by Settling Defendants, Defendant Releasees and  
20 Downstream Defendant Releasees with respect to any alleged failure to warn about acrylamide in  
21 Covered Products manufactured or purchased for resale by Settling Defendants on and after the  
22 Applicable Compliance Date as to each type of Covered Product.

23 **8.     PROVISION OF NOTICE**

24           8.1     When CEH is entitled to receive any notice under this Consent Judgment, the notice  
25 shall be sent by first class and electronic mail to:

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27 ///

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1                                   Howard Hirsch  
2                                   Lexington Law Group  
3                                   503 Divisadero Street  
4                                   San Francisco, CA 94117  
5                                   hhirsch@lexlawgroup.com

6                   8.2     When Settling Defendants are entitled to receive any notice under this Consent  
7 Judgment, the notice shall be sent by first class and electronic mail to:

8                                   Trenton H. Norris  
9                                   Arnold & Porter  
10                                  Three Embarcadero Center, 10<sup>th</sup> Floor  
11                                  San Francisco, CA 94111  
12                                  Trent.Norris@arnoldporter.com

13                   Any Party may modify the person and/or address to whom the notice is to be sent by sending  
14 the other Party notice by first class and electronic mail.

15 **9.     COURT APPROVAL**

16                   9.1     This Consent Judgment shall become effective upon the date signed by CEH and  
17 Settling Defendants, whichever is later, provided however, that CEH shall prepare and file a Motion  
18 for Approval of this Consent Judgment and Settling Defendants shall support entry of this Consent  
19 Judgment by the Court.

20                   9.2     If this Consent Judgment is not entered by the Court, it shall be of no force or effect  
21 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose other  
22 than to allow the Court to determine if there was a material breach of Section 9.1.

23 **10.    GOVERNING LAW AND CONSTRUCTION**

24                   10.1    The terms of this Consent Judgment shall be governed by the laws of the State of  
25 California.

26 **11.    ATTORNEYS' FEES**

27                   11.1    A Party who unsuccessfully brings or contests an action, motion, or application  
28 arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable  
attorneys' fees and costs.

                  11.2    Nothing in this Section 11 shall preclude a party from seeking an award of sanctions  
pursuant to law.

1 **12. ENTIRE AGREEMENT**

2 12.1 This Consent Judgment contains the sole and entire agreement and understanding of  
3 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
4 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and  
5 therein. There are no warranties, representations, or other agreements between the Parties except as  
6 expressly set forth herein. No representations, oral or otherwise, express or implied, other than  
7 those specifically referred to in this Consent Judgment have been made by any Party hereto. No  
8 other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed  
9 to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced  
10 herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the  
11 extent that they are expressly incorporated herein. No supplementation, modification, waiver, or  
12 termination of this Consent Judgment shall be binding unless executed in writing by the Party to be  
13 bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or  
14 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such  
15 waiver constitute a continuing waiver.

16 **13. RETENTION OF JURISDICTION**

17 13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent  
18 Judgment.

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

20 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
21 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute  
22 the Consent Judgment on behalf of the Party represented and legally to bind that Party.

23 **15. ASSIGNMENT; APPLICATION OF CONSENT JUDGMENT**

24 15.1 Settling Defendants may assign their rights and obligations under this agreement to  
25 the Acquiring Entity effective as of the closing of the transaction pursuant to which the Acquiring  
26 Entity acquires the business encompassing, among other things, the manufacturing, marketing,  
27 distribution and sale of the Covered Products. From and after such assignment, the Consent

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1 Judgment shall solely apply to CEH and the Acquiring Entity (which shall be the sole Settling  
2 Defendant), without limiting the scope of the releases provided in Section 7.

3 15.2 This Consent Judgment shall apply to and be binding upon CEH and Settling  
4 Defendants, and their respective divisions, subdivisions, and subsidiaries, and the successors or  
5 assigns of any of them (including, for purposes of clarity, the Acquiring Entity in the event of  
6 assignment in accordance with Section 15.1), without limiting the scope of releases provided in  
7 Section 7.

8 **16. NO EFFECT ON OTHER SETTLEMENTS**

9 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
10 against an entity other than Settling Defendants on terms that are different than those contained in  
11 this Consent Judgment. Settling Defendants may move to modify this Consent Judgment pursuant  
12 to Section 6 to substitute a higher Reformulation Level that CEH agrees to in a future consent  
13 judgment applicable to products substantially similar to the Covered Products, and CEH agrees not  
14 to oppose any such motion except for good cause shown.

15 **17. DISMISSALS**

16 17.1 Within ten (10) calendar days of the receiving the payments required by Section 5,  
17 CEH shall file a request for dismissal without prejudice as to (i) Defendant Winco Foods, LLC in this  
18 above-captioned action; and (ii) Defendants Kellogg USA LLC, as successor to Kellogg USA Inc.;  
19 Kellogg Sales Company; Murray Biscuit Company, L.L.C.; and Safeway Inc. in the action entitled  
20 *Center for Environmental Health v. Biscoamerica Corp., et al.*, Alameda County Superior Court No.  
21 RG17-881931, and each of these defendants shall waive all costs in those actions.

22 **18. EXECUTION IN COUNTERPARTS**

23 18.1 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, ADJUDGED, AND DECREED**

Dated: 12/3/2019

MICHAEL MARKMAN  
Judge of the Superior Court

**IT IS SO STIPULATED:**

<p>Dated: <u>7/7</u>, 2019</p>	<p><b>CENTER FOR ENVIRONMENTAL HEALTH</b></p> <p><u><i>Michael Green</i></u> Signature</p> <p><u>Michael Green</u> Printed Name</p> <p><u>CEO</u> Title</p>
<p>Dated: _____, 2019</p>	<p><b>KELLOGG USA LLC, AS SUCCESSOR TO KELLOGG USA, INC.; KELLOGG SALES COMPANY; AND MURRAY BISCUIT COMPANY, L.L.C .</b></p> <p>_____ Signature</p> <p>_____ Printed Name</p> <p>_____ Title</p>

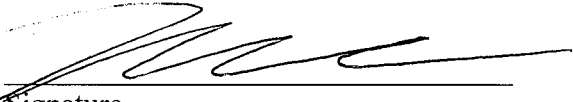


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**IT IS SO ORDERED, ADJUDGED, AND DECREED**

Dated: \_\_\_\_\_  
Judge of the Superior Court

**IT IS SO STIPULATED:**

<p>Dated: _____, 2019</p>	<p><b>CENTER FOR ENVIRONMENTAL HEALTH</b></p> <p>_____ Signature</p> <p>_____ Printed Name</p> <p>_____ Title</p>
<p>Dated: <u>7/1</u>, 2019</p>	<p><b>KELLOGG USA LLC, AS SUCCESSOR TO KELLOGG USA, INC.; KELLOGG SALES COMPANY; AND MURRAY BISCUIT COMPANY, L.L.C.</b></p> <p> _____ Signature</p> <p><u>Kenneth Odra</u> Printed Name</p> <p><u>Corporate Counsel Food Safety</u> Title</p>

**EXHIBIT A**

<b>Covered Products – Animal Cookies</b>	<b>Applicable Compliance Dates</b>
Mother’s Circus Animal Cookies	12/31/2019
Keebler Animal Cookies	12/31/2019
Any other future Animal Cookies	12/31/2019

<b>Covered Products – Animal Crackers</b>	<b>Applicable Compliance Dates</b>
Keebler Animal Crackers	12/31/2019
Any other future Animal Crackers	12/31/2019

<b>Covered Products – Ginger Snap Cookies</b>	<b>Applicable Compliance Dates</b>
Murray Ginger Snaps	6/1/2020
Any other future Ginger Snap Cookies	6/1/2020