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ENDORSED  
FILED  
ALAMEDA COUNTY

DEC 18 2018

CLERK OF THE SUPERIOR COURT  
By: ANGEL LOGAN  
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 PEPPERIDGE FARM,  
INCORPORATED

**1. DEFINITIONS**

1.1 The "Complaint" means the operative complaint in the above-captioned matter.

1.2 "Compliance Date" shall mean the date that is six months after the Effective Date.

1.3 "Covered Products" means all ginger snap cookies. An initial list of the Covered Products categorized by Wire-Cut Covered Products and Rotary-Moulded Covered Products is attached hereto as Exhibit A.

1.4 Covered Products fall into one of the following two categories:

1           1.4.1    “Wire-Cut Covered Products” refers to Covered Products that are produced  
2 using a dough with approximately twice the ingredient water content of Rotary-Moulded Covered  
3 Products and utilizing a wire-cut extrusion process.

4           1.4.2    “Rotary-Moulded Covered Products” refers to Covered Products that are  
5 produced using a dough with approximately one-half the ingredient water content of Wire-Cut  
6 Covered Products and utilizing a rotary-moulded process.

7           1.5     Settling Defendant may update the list of Covered Products from time to time to  
8 include ginger snap cookies launched after the Effective Date by sending written notice to CEH and  
9 designating the products in one of the categories in Section 1.4. If CEH disputes the designation of  
10 such products, Settling Defendant may seek to modify the Consent Judgment following the  
11 procedure pursuant to Section 6.6.

12          1.6     “Effective Date” means the date on which notice of entry of this Consent Judgment  
13 by the Court is served upon Settling Defendant.

## 14       **2.     INTRODUCTION**

15          2.1     The Parties to this Consent Judgment are the Center for Environmental Health, a  
16 California non-profit corporation (“CEH”) and Pepperidge Farm Incorporated (“Settling  
17 Defendant”). CEH and Settling Defendant (the “Parties”) enter into this Consent Judgment to settle  
18 certain claims asserted by CEH against Settling Defendant as set forth in the Complaint.

19          2.2     On or about March 20, 2017, CEH provided a 60-day Notice of Violation of  
20 Proposition 65 to the California Attorney General, the District Attorneys of every county in  
21 California, the City Attorneys of every California city with a population greater than 750,000, and  
22 to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons  
23 in California to acrylamide contained in Covered Products without first providing a clear and  
24 reasonable Proposition 65 warning (the “Notice”).

25          2.3     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 naming Settling Defendant as an original defendant. On October 18, 2017, CEH filed the  
3 Complaint.

4           2.5     For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
5 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
6 over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in the County  
7 of Alameda, and that this Court has jurisdiction to enter and enforce this Consent Judgment as a full  
8 and final resolution of all claims which were or could have been raised in the Complaint based on  
9 the facts alleged therein and in the Notices with respect to Covered Products manufactured,  
10 distributed, and/or sold by or on behalf of Settling Defendant.

11           2.6     Nothing in this Consent Judgment is or shall be construed as an admission by the  
12 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with  
13 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
14 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
15 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any  
16 other pending or future legal proceedings. This Consent Judgment is the product of negotiation and  
17 compromise and is accepted by the Parties solely for purposes of settling, compromising, and  
18 resolving issues disputed in this action.

### 19     **3.     INJUNCTIVE RELIEF**

20           3.1     **Reformulation of Covered Products.** Beginning on the Compliance Date, Settling  
21 Defendant shall not purchase or manufacture Covered Products that will thereafter be sold or  
22 offered for sale in California that exceed the following acrylamide concentration limits (the  
23 “Reformulation Levels”), such concentration to be determined by use of a test performed by an  
24 accredited laboratory using either GC/MS (Gas Chromatograph/Mass Spectrometry), LC-MS/MS  
25 (Liquid Chromatograph-Mass Spectrometry), or any other testing method agreed upon by the  
26 Parties:

27                   3.1.1     For Wire-Cut Covered Products:  
28

1                   3.1.1.1     The average acrylamide concentration shall not exceed 281 parts per  
2 billion (“ppb”) by weight (the “Wire-Cut Average Level”). The Wire-Cut Average Level is  
3 determined by randomly selecting and testing at least one sample each from at least five and up to  
4 30 different lots of a particular Covered Product that is a Wire-Cut Covered Product (or the  
5 maximum number of lots available for testing if fewer than five) during a testing period of at least  
6 60 days, and averaging the results of the samples for all Wire-Cut Covered Products. 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 once, and the mean and standard  
9 deviation recalculated using the remaining data points. The mean determined in accordance with  
10 this procedure shall be deemed the Wire-Cut Average Level.

11                   3.1.1.2     The acrylamide concentration of any individual unit of Wire-Cut  
12 Covered Product shall not exceed 300 ppb by weight (the “Wire-Cut Unit Level”), based on a  
13 representative composite sample taken from the individual unit being tested.

14                   3.1.2     For Rotary-Moulded Covered Products:

15                   3.1.2.1     The average acrylamide concentration shall not exceed 300 ppb by  
16 weight (the “Rotary-Moulded Average Level”). The Rotary-Moulded Average Level is determined  
17 by randomly selecting and testing at least one sample each from at least five and up to 30 different  
18 lots of a particular Covered Product that is a Rotary-Moulded Covered Product (or the maximum  
19 number of lots available for testing if fewer than five) during a testing period of at least 60 days,  
20 and averaging the results of the samples for all Rotary-Moulded Covered Products. The mean and  
21 standard deviation shall be calculated using the sampling data. Any data points that are more than  
22 three standard deviations outside the mean shall be discarded once, and the mean and standard  
23 deviation recalculated using the remaining data points. The mean determined in accordance with  
24 this procedure shall be deemed the Rotary-Moulded Average Level.

25                   3.1.2.2     The acrylamide concentration of any individual unit of Rotary-  
26 Moulded Covered Product shall not exceed 390 ppb by weight (the “Rotary-Moulded Unit Level”),  
27 based on a representative composite sample taken from the individual unit being tested.  
28

1           3.2     For Covered Products: the average acrylamide concentration shall not exceed 281  
2 ppb by weight (the “Covered Products Average Level”). The Covered Products Average Level is  
3 determined by averaging the Wire-Cut Average Level with the Rotary-Moulded Average Level, as  
4 calculated in accordance with Sections 3.1.1.1 and 3.1.2.1 above.

5           3.3     For avoidance of doubt, Covered Products manufactured prior to the Compliance  
6 Date are not subject to the Reformulation Levels, even if such products are sold in California or to  
7 California consumers after the Effective Date.

#### 8     **4.     ENFORCEMENT**

9           4.1     **General Enforcement Provisions.** CEH may, by motion or application for an order  
10 to show cause before this Court, enforce the terms and conditions contained in this Consent  
11 Judgment. Any action to enforce alleged violations of Section 3.1 by Settling Defendant shall be  
12 brought exclusively pursuant to this Section 4, and be subject to the meet and confer requirement of  
13 Section 4.2.4 if applicable.

#### 14           **4.2     Enforcement of Reformulation Commitment.**

15           4.2.1     Notice of Violation. In the event that CEH purchases a Covered Product in  
16 California that was sold or distributed by or on behalf of Settling Defendant and that has a best-by  
17 or sell-by (or equivalent) date or other code that reflects that the Covered Product was manufactured  
18 on or after the Compliance Date, and for which CEH has laboratory test results showing that the  
19 Covered Product has an acrylamide level exceeding the Wire-Cut Unit Level or Rotary-Moulded  
20 Unit Level, as applicable, then CEH may issue a Notice of Violation pursuant to this Section.

#### 21           4.2.2     Service of Notice of Violation and Supporting Documentation.

22           4.2.2.1     The Notice of Violation shall be sent to the person(s) identified in  
23 Section 8.2 to receive notices for Settling Defendant, and must be served within sixty (60) days of  
24 the later of the date the Covered Product at issue was purchased or otherwise acquired by CEH or  
25 the date that CEH can reasonably determine that the Covered Product at issue was manufactured,  
26 distributed, or sold by Settling Defendant, provided, however, that CEH may have up to an  
27 additional sixty (60) days to send the Notice of Violation if, notwithstanding CEH’s good faith  
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1 efforts, the test data required by Section 4.2.2.2 below cannot be obtained by CEH from its  
2 laboratory before expiration of the initial sixty (60) day period.

3 4.2.2.2 The Notice of Violation shall, at a minimum, set forth: (a) the date the  
4 Covered Product was purchased; (b) the location at which the Covered Product was purchased; (c) a  
5 description of the Covered Product giving rise to the alleged violation, including the name and  
6 address of the retail entity from which the sample was obtained and pictures of the product  
7 packaging from all sides, which identifies the product lot; and (d) all test data obtained by CEH  
8 regarding the Covered Product and supporting documentation sufficient for validation of the test  
9 results, including any laboratory reports, quality assurance reports, and quality control reports  
10 associated with testing of the Covered Product.

11 4.2.3 Notice of Election of Response. No more than sixty (60) days after  
12 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to  
13 CEH whether it elects to contest the allegations contained in a Notice of Violation (“Notice of  
14 Election”). Failure to provide a Notice of Election within sixty (60) days of effectuation of service  
15 of a Notice of Violation shall be deemed an election to contest the Notice of Violation. Upon notice  
16 to CEH, Settling Defendant may have up to an additional sixty (60) days to elect if, notwithstanding  
17 Settling Defendant’s good faith efforts, Settling Defendant is unable to verify the test data provided  
18 by CEH before expiration of the initial sixty (60) day period.

19 4.2.3.1 If a Notice of Violation is contested, the Notice of Election shall  
20 include all documents upon which Settling Defendant is relying to contest the alleged violation,  
21 including all available non-privileged test data. If Settling Defendant or CEH later acquires  
22 additional non-privileged testing or other data regarding the alleged violation, during the meet and  
23 confer period described in Section 4.2.4, it shall notify the other Party and promptly provide all such  
24 non-privileged data or information to the Party unless either the Notice of Violation or Notice of  
25 Election has been withdrawn.

26 4.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and Settling  
27 Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of  
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1 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw the  
2 original Notice of Election contesting the violation and serve a new Notice of Election to not  
3 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay  
4 \$2,500 in addition to any other payment required under this Consent Judgment. At any time, CEH  
5 may withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the result shall  
6 be as if CEH never issued any such Notice of Violation. In the event CEH withdraws a Notice of  
7 Violation pursuant to the preceding sentence, it shall return any payments made by Settling  
8 Defendant in connection with that Notice. If no informal resolution of a Notice of Violation results  
9 within thirty (30) days of a Notice of Election to contest, CEH may file an enforcement motion or  
10 application pursuant to Section 4.1. The parties may extend this thirty (30) day time period by  
11 stipulation. In any such proceeding, CEH may seek whatever fines, costs, penalties, attorneys'  
12 fees, or other remedies are provided by law for failure to comply with the Consent Judgment.

13 4.2.5 Non-Contested Notices. If Settling Defendant elects to not contest the  
14 allegations in a Notice of Violation, it shall undertake corrective action(s) and make payments, if  
15 any, as set forth below.

16 4.2.5.1 Settling Defendant shall include in its Notice of Election a detailed  
17 description with supporting documentation of the corrective action(s) that it has undertaken or  
18 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,  
19 provide reasonable assurance that, with respect to all Covered Products having the same lot number  
20 as that of the Covered Product identified in CEH's Notice of Violation (the "Noticed Covered  
21 Products") Settling Defendant has sent instructions to any retailers or customers that offer the  
22 Noticed Covered Products for sale to cease offering the Noticed Covered Products for sale to  
23 California consumers and to return all such Noticed Covered Products to Settling Defendant if  
24 Settling Defendant has reason to believe the Noticed Covered Products are still offered for sale to  
25 California consumers. Settling Defendant shall make available to CEH upon reasonable notice  
26 (which shall not exceed more than one request per year) for inspection and copying records of any  
27 correspondence to retailers or customers regarding the foregoing. Settling Defendant will be  
28

1 excused from the obligation to instruct retailers or customers to cease California sales if Settling  
2 Defendant produces test results or other evidence showing that the Noticed Covered Products  
3 comply with the Wire-Cut Average Level or Rotary-Moulded Average Level specified in Section  
4 3.1., as applicable. However, to avail itself of this provision, Settling Defendant must provide CEH  
5 with all non-privileged acrylamide test data in its possession, custody or control pertaining to the  
6 type of Covered Product at issue in the Notice of Violation that was performed within the year prior  
7 to Settling Defendant producing test results to CEH under this Section 4.2.5.1. If there is a dispute  
8 over the corrective action, Settling Defendant and CEH shall meet and confer before seeking any  
9 remedy in court.

10 4.2.5.2 If the Notice of Violation is the first, second, third, or fourth Notice of  
11 Violation received by Settling Defendant under Section 4.2.1 that was not successfully contested or  
12 withdrawn, then Settling Defendant shall pay \$15,000 for each Notice of Violation. If Settling  
13 Defendant has received more than four (4) Notices of Violation under Section 4.2.1 that were not  
14 successfully contested or withdrawn, then Settling Defendant shall pay \$25,000 for each Notice of  
15 Violation. If Settling Defendant produces with its Notice of Election test data for the specific SKU  
16 or comparative like items that reasonably demonstrates predicted acrylamide levels below the Wire-  
17 Cut Unit Level or Rotary-Moulded Unit Level, as applicable, then any payment under this Section  
18 shall be reduced by 100 percent (100%) for the first Notice of Violation, by seventy-five percent  
19 (75%) for the second Notice of Violation, and by fifty percent (50%) for any subsequent Notice of  
20 Violation. If Settling Defendant is excused from corrective action under Section 4.2.5.1 based on  
21 its showing of the Wire-Cut Average Level or Rotary-Moulded Average Level, as applicable, then  
22 Settling Defendant shall pay \$2,500 for that Notice of Violation. In no case shall Settling  
23 Defendant be obligated to pay more than \$100,000 for all Notices of Violation not successfully  
24 contested or withdrawn in any calendar year irrespective of the total number of Notices of Violation  
25 issued.



1           4.2.6     In no case shall CEH issue more than one Notice of Violation per  
2 manufacturing lot of a type of Covered Product. CEH shall be limited to issuing no more than two  
3 total Notices of Violation to Settling Defendant in the first year after the Compliance Date.

4           4.2.7     Payments. Any payments under Section 4.2 shall be made by check  
5 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a  
6 Notice of Election triggering a payment and shall be used as reimbursement for costs for  
7 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse attorneys’  
8 fees and costs incurred in connection with these activities, and shall be the extent of all monetary  
9 remedies available to CEH under this Consent Judgment for a non-contested Notice of Violation.

10          4.3     **Repeat Violations.** If Settling Defendant has received five (5) or more Notices of  
11 Violation concerning the same type of Covered Product that were not successfully contested or  
12 withdrawn in any two (2) year period then, at CEH’s option, CEH may seek whatever fines, costs,  
13 penalties, attorneys’ fees, or other remedies that are provided by law for failure to comply with the  
14 Consent Judgment. Prior to seeking such relief, CEH shall meet and confer with Settling Defendant  
15 for at least thirty (30) days to determine if Settling Defendant and CEH can agree on measures that  
16 Settling Defendant can undertake to prevent future alleged violations.

## 17     **5.     PAYMENTS**

18          5.1     **Payments by Settling Defendant.** Within ten (10) calendar days of the Effective  
19 Date, Settling Defendant shall pay the total sum of \$97,500 as a settlement payment as further set  
20 forth in this Section.

21          5.2     **Allocation of Payments.** The total settlement amount shall be paid in four (4)  
22 separate checks in the amounts specified below and delivered as set forth below. Any failure by  
23 Settling Defendant to comply with the payment terms herein shall be subject to a stipulated late fee  
24 to be paid by Settling Defendant to CEH in the amount of \$100 for each day the full payment is not  
25 received after the payment due date set forth in Section 5.1. The late fees required under this  
26 Section shall be recoverable, together with reasonable attorneys’ fees, in an enforcement proceeding  
27 brought pursuant to Section 4 of this Consent Judgment. The funds paid by Settling Defendant shall  
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1 be allocated as set forth below between the following categories and made payable as follows:

2 5.2.1 \$16,920 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).

3 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §  
4 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health  
5 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment  
6 for \$12,690 shall be made payable to OEHHA and associated with taxpayer identification number  
7 68-0284486. This payment shall be delivered as follows:

8 For United States Postal Service Delivery:

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

14 For Non-United States Postal Service Delivery:

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

20 The CEH portion of the civil penalty payment for \$4,230 shall be made  
21 payable to the Center for Environmental Health and associated with taxpayer identification number  
22 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San  
23 Francisco, CA 94117.

24 5.2.2 \$12,685 as an Additional Settlement Payment ("ASP") to CEH pursuant to  
25 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH  
26 intends to restrict use of the ASPs received from this Consent Judgment to the following purposes:  
27 the funds will be placed in CEH's Toxics in Food Fund and used to support CEH programs and  
28 activities that seek to educate the public about acrylamide and other toxic chemicals in food, to  
work with the food industry and agriculture interests to reduce exposure to acrylamide and other  
toxic chemicals in food, and to thereby reduce the public health impacts and risks of exposure to  
acrylamide and other toxic chemicals in food sold in California. CEH shall obtain and maintain

1 adequate records to document that ASPs are spent on these activities and CEH agrees to provide  
2 such documentation to the Attorney General within thirty (30) days of any request from the  
3 Attorney General. The payment pursuant to this Section shall be made payable to the Center for  
4 Environmental Health and associated with taxpayer identification number 94-3251981. This  
5 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
6 94117.

7           5.2.3     \$67,895 as a reimbursement of a portion of CEH's reasonable attorneys'  
8 fees and costs. The attorneys' fees and cost reimbursement shall be made payable to the Lexington  
9 Law Group and associated with taxpayer identification number 94-3317175. This payment shall be  
10 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

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

12           6.1     **Modification.** This Consent Judgment may be modified from time to time by  
13 express written agreement of the Parties, with the approval of the Court, or by an order of this Court  
14 upon motion and in accordance with law.

15           6.2     **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
16 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to modify  
17 the Consent Judgment.

18           6.3     **Change in Proposition 65.** If Proposition 65 or its implementing regulations  
19 (including but not limited to the "safe harbor no significant risk level" for acrylamide set forth at  
20 Cal. Code Regs., tit. 27, section 25705, subdivision (c)(2) or any "alternative risk level" adopted by  
21 regulation or court decision) are changed from their terms as they exist on the date of entry of this  
22 Consent Judgment in a manner that impacts the Reformulation Levels, or if OEHHA takes some  
23 other final regulatory action for products similar to the Covered Products in a manner that impacts  
24 the Reformulation Levels or determines that warnings for acrylamide are not required for such  
25 products, then Settling Defendant may seek to modify this Consent Judgment to modify the  
26 Reformulation Levels. The Parties recognize that the Reformulation Levels are based on a  
27 compromise of a number of issues, and that a change to the "safe harbor no significant risk level"  
28

1 for acrylamide would not necessarily entitle a Party to a modification of the terms of this Consent  
2 Judgment corresponding to a linear relationship with such a change.

3           **6.4 Other Court Decisions.** If a final decision of a court determines that warnings for  
4 acrylamide exposures or that enforcement of Proposition 65 claims for acrylamide exposures are  
5 preempted or otherwise unlawful or unconstitutional with respect to products similar to the Covered  
6 Products, then Settling Defendant may move to modify this Consent Judgment to conform to such  
7 ruling in order to avoid unfair, inconsistent, or anti-competitive results.

8           **6.5 Federal Agency Action and Preemption.** If a court of competent jurisdiction or an  
9 agency of the federal government, including, but not limited to, the U.S. Food and Drug  
10 Administration, states through any guidance, regulation or legally binding act that federal law has  
11 preemptive effect on any of the requirements of this Consent Judgment, then this Consent Judgment  
12 may be modified in accordance with the procedure for noticed motions set forth in Section 6.1 to  
13 bring it into compliance with or avoid conflict with federal law. Any such modification shall be  
14 limited to those changes that are necessary to bring this Consent Judgment into compliance with or  
15 avoid conflict with federal law.

16           **6.6** Before filing any motion to modify the Consent Judgment, Settling Defendant shall  
17 provide written notice to CEH to initiate the meet and confer procedure in Section 6.2. If the  
18 Parties do not agree on the proposed modification during informal meet and confer efforts, Settling  
19 Defendant may file a motion to modify the Consent Judgment within sixty (60) days of the date of  
20 the written notice that Settling Defendant provides to CEH under this Section 6.

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

22           **7.1** Provided that Settling Defendant complies in full with its obligations under Section 5  
23 hereof, this Consent Judgment is a full, final and binding resolution between CEH on behalf of itself  
24 and the public interest and Settling Defendant and its past, present, and future parents, subsidiaries,  
25 affiliated entities that are under common ownership, directors, officers, employees, agents,  
26 shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which  
27 Settling Defendant directly or indirectly distributes or sells Covered Products, including but not  
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1 limited to distributors, wholesalers, customers, retailers (including but not limited to Safeway Inc.),  
2 franchisees, licensors, and licensees (“Downstream Defendant Releasees”), of any violation of  
3 Proposition 65 based on failure to warn about alleged exposure to acrylamide contained in Covered  
4 Products that were manufactured, purchased, distributed, or sold by or on behalf of Settling  
5 Defendant prior to the Compliance Date.

6           7.2     Provided that Settling Defendant complies in full with its obligations under Section 5  
7 hereof, CEH, for itself, its agents, successors and assigns, releases, waives, and forever discharges  
8 any and all claims against Settling Defendant, Defendant Releasees, and Downstream Defendant  
9 Releasees arising from any violation of Proposition 65 or any other statutory or common law claims  
10 that have been or could have been asserted by CEH individually or in the public interest regarding  
11 the failure to warn about exposure to acrylamide arising in connection with Covered Products  
12 manufactured, purchased, distributed, or sold by or on behalf of Settling Defendant prior to the  
13 Compliance Date.

14           Provided that Settling Defendant complies in full with its obligations under Section 5 hereof,  
15 CEH, in its individual capacity only and not in its representative capacity, also provides a release to  
16 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees which shall be  
17 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,  
18 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands of  
19 CEH of any nature, character, or kind, whether known or unknown, suspected or unsuspected,  
20 arising out of alleged or actual exposures to acrylamide in the Covered Products manufactured,  
21 purchased, distributed, or sold by or on behalf of Settling Defendant before the Compliance Date.

22           7.3     Provided that Settling Defendant complies in full with its obligations under Section 5  
23 hereof, compliance with the terms of this Consent Judgment by Settling Defendant shall constitute  
24 compliance with Proposition 65 by Settling Defendant, Defendant Releasees and Downstream  
25 Defendant Releasees with respect to any alleged failure to warn about acrylamide in Covered  
26 Products purchased, manufactured, distributed, or sold by or on behalf of Settling Defendant on and  
27 after the Compliance Date.

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1           7.4     With respect to the foregoing waivers and releases in Section 7, CEH on its own  
2     behalf hereby specifically waives any and all rights and benefits which it now has, or in the future  
3     may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which  
4     provides as follows:

5           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR  
6     DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME  
7     OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE  
8     MATERIALLY AFFECTED THIS SETTLEMENT WITH THE DEBTOR.

9     **8.     PROVISION OF NOTICE**

10           8.1     When CEH is entitled to receive any notice under this Consent Judgment, the notice  
11     shall be sent by first class and electronic mail to:

12                                 Howard Hirsch  
13                                 Lexington Law Group  
14                                 503 Divisadero Street  
15                                 San Francisco, CA 94117  
16                                 hhirsch@lexlawgroup.com

17           8.2     When Settling Defendant is entitled to receive any notice under this Consent  
18     Judgment, the notice shall be sent by first class and electronic mail to:

19                                 Sarah Esmaili  
20                                 Arnold & Porter Kaye Scholer LLP  
21                                 3 Embarcadero Center, Suite 1000  
22                                 San Francisco, CA 94111  
23                                 sarah.esmaili@apks.com

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

26     **9.     COURT APPROVAL**

27           9.1     This Consent Judgment shall become effective upon the date signed by CEH and  
28     Settling Defendant, whichever is later, provided however, that CEH shall prepare and file a Motion  
   for Approval of this Consent Judgment and Settling Defendant shall support entry of this Consent  
   Judgment by the Court.

          9.2     If this Consent Judgment is not entered by the Court, it shall be of no force or effect

1 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose other  
2 than to allow the Court to determine if there was a material breach of Section 9.1.

3 **10. GOVERNING LAW AND CONSTRUCTION**

4 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
5 California.

6 **11. ATTORNEYS' FEES**

7 11.1 A Party who unsuccessfully brings or contests an action, motion, or application  
8 arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable  
9 attorneys' fees and costs.

10 11.2 Nothing in this Section 11 shall preclude a party from seeking an award of sanctions  
11 pursuant to law.

12 **12. ENTIRE AGREEMENT**

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

1 **13. RETENTION OF JURISDICTION**

2 13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent  
3 Judgment. Notwithstanding the provisions of Section 6, nothing in this Consent Judgment limits or  
4 affects the Court's authority to modify this Consent Judgment as provided by law.

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

6 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
7 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute  
8 the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

10 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
11 against an entity that is not Settling Defendant on terms that are different than those contained in  
12 this Consent Judgment. Settling Defendant may move to modify this Consent Judgment pursuant to  
13 Section 6 to substitute higher Reformulation Levels that CEH agrees to in a future consent judgment  
14 applicable to products substantially similar to the Covered Products, and CEH agrees not to oppose  
15 any such motion except for good cause shown.

16 **16. EXECUTION IN COUNTERPARTS**

17 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
18 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
19 constitute one document.

20  
21 **IT IS SO ORDERED, ADJUDGED,**  
22 **AND DECREED**

23  
24 Dated: DEC 18 2018

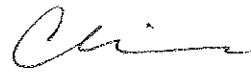
IOANA PETROU  
Judge of the Superior Court



1 IT IS SO STIPULATED:

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3 Dated: 24 SEP, 2018

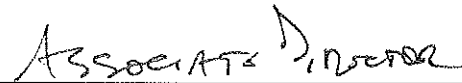
CENTER FOR ENVIRONMENTAL HEALTH



Signature



Printed Name



Title

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PEPPERIDGE FARM, INCORPORATED

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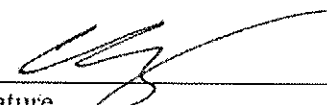
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Dated: 9/21/18, 2018

PEPPERIDGE FARM, INCORPORATED

  
\_\_\_\_\_  
Signature

Chris Dayton  
Printed Name

VP Finance Pepperidge Farm  
Title

EXHIBIT A

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Wire-Cut Covered Products:

Gingerman Cookies

Mini Gingerman Grab Bag

Rotary-Moulded Covered Products:

Ginger Family Collection