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 14 PERVINE FOODS, LLC, individually and doing
 15 business as CHEF ROBERT IRVINE'S FIT
 16 CRUNCH; BAKERY BARN, INC., individually and
 17 doing business as CHEF ROBERT IRVINE'S FIT
 18 CRUNCH

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 20 **COUNTY OF ALAMEDA**

21 ENVIRONMENTAL RESEARCH CENTER,
 22 INC., a non-profit California corporation,

Plaintiff,

v.

23 PERVINE FOODS, LLC, individually and
 24 doing business as CHEF ROBERT IRVINE'S
 25 FIT CRUNCH, a Pennsylvania limited liability
 26 company; BAKERY BARN, INC.,
 27 individually and doing business as CHEF
 28 ROBERT IRVINE'S FIT CRUNCH, a
 Pennsylvania corporation; and DOES 1 - 25,

Defendants.

~~ENDORSED
 FILED
 ALAMEDA COUNTY~~

~~OCT 07 2019~~

~~CLERK OF THE SUPERIOR COURT~~

~~By _____ Deputy~~

~~Jayana _____~~

FILED
 ALAMEDA COUNTY

NOV 19 2019

CLERK OF THE SUPERIOR COURT

By Danella K. Scott Deputy

Courtesy
 Copy

1 **1. INTRODUCTION**

2 **1.1** On September 17, 2018, Plaintiff Environmental Research Center, Inc. (“ERC”),
3 a non-profit corporation, as a private enforcer and in the public interest, initiated this action by
4 filing a Complaint for Permanent Injunction, Civil Penalties and Other Relief pursuant to the
5 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
6 against PERVINE FOODS, LLC, individually and doing business as CHEF ROBERT
7 IRVINE’S FIT CRUNCH; BAKERY BARN, INC., individually and doing business as CHEF
8 ROBERT IRVINE’S FIT CRUNCH (collectively “PERVINE/BAKERY”) and DOES 1-25.
9 Subsequently, on December 12, 2018, ERC filed an Amended Complaint (the operative
10 Complaint referred to hereinafter as the “Complaint”).

11 **1.2** In this action, ERC alleges that fourteen specific products manufactured,
12 distributed, or sold by PERVINE/BAKERY contain lead, a chemical listed under Proposition
13 65 as a carcinogen and reproductive toxin, and expose consumers to lead at a level requiring a
14 Proposition 65 warning. These products (referred to hereinafter individually as a “Covered
15 Product” or collectively as “Covered Products”) are: (1) Chef Robert Irvine's Fit Crunch Whey
16 Protein Baked Bar Cookies And Cream, (2) Chef Robert Irvine's Fit Crunch Whey Protein
17 Baked Bar Peanut Butter, (3) Chef Robert Irvine's Fit Crunch Whey Protein Baked Bar
18 Chocolate Chip Cookie Dough, (4) Chef Robert Irvine's Fit Crunch Whey Protein Baked Bar
19 Caramel Peanut, (5) Chef Robert Irvine's Fit Crunch Whey Protein Brownie Cookie Dough, (6)
20 Chef Robert Irvine's Fit Crunch Whey Protein Powder Chocolate Deluxe, (7) Chef Robert
21 Irvine's Fit Crunch Whey Protein Powder Peanut Butter, (8) Chef Robert Irvine's Fit Crunch
22 Whey Protein Brownie Chocolate 50g, (9) Chef Robert Irvine's Fit Crunch Whey Protein
23 Baked Bar Birthday Cake 88g, (10) Chef Robert Irvine's Fit Crunch Whey Protein Baked Bar
24 Chocolate Chip Cookie Dough 46g, (11) Chef Robert Irvine's Fit Crunch Whey Protein Baked
25 Bar Cinnamon Twist 46g, (12) Chef Robert Irvine's Fit Crunch Whey Protein Baked Bar
26 Birthday Cake 46g, (13) Chef Robert Irvine's Fit Crunch Whey Protein Baked Bar Caramel
27 Peanut 46g, and (14) Chef Robert Irvine's Fit Crunch Whey Protein Baked Bar Chocolate
28 Peanut Butter 46g.

1 **1.3** ERC and PERVINE/BAKERY are hereinafter referred to individually as a
2 “Party” or collectively as the “Parties.”

3 **1.4** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
4 causes, helping safeguard the public from health hazards by reducing the use and misuse of
5 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
6 and encouraging corporate responsibility.

7 **1.5** For purposes of this Consent Judgment, the Parties agree that each defendant is a
8 business entity each of which has employed ten or more persons at all times relevant to this action,
9 and qualifies as a “person in the course of doing business” within the meaning of Proposition 65.
10 PERVINE/BAKERY manufactures, distributes, and/or sells the Covered Products.

11 **1.6** The Complaint is based on allegations contained in ERC’s Notices of Violation
12 dated June 8, 2018 and September 14, 2018 that were served on the California Attorney General,
13 other public enforcers, and PERVINE/BAKERY (“Notices”). True and correct copies of the 60-
14 Day Notices dated June 8, 2018 and September 14, 2018 are attached hereto as **Exhibits A and B**
15 respectively and are incorporated herein by reference. More than 60 days have passed since the
16 Notices were served on the Attorney General, public enforcers, and PERVINE/BAKERY and no
17 designated governmental entity has filed a Complaint against PERVINE/BAKERY with regard to
18 the Covered Products or the alleged violations.

19 **1.7** ERC’s Notices and Complaint allege that use of the Covered Products exposes
20 persons in California to lead without first providing clear and reasonable warnings in violation
21 of California Health and Safety Code section 25249.6. PERVINE/BAKERY denies ERC’s
22 allegations, and asserts that independent testing confirms that PERVINE/BAKERY’s Covered
23 Products comply with Proposition 65.

24 **1.8** The Effective Date of this Consent Judgment is the date on which it is entered as
25 a Judgment by this Court.

26 **2. NO ADMISSION**

27 **2.1** The Parties have entered into this Consent Judgment in order to settle,
28 compromise, and resolve all claims that were raised in the Complaint, or that could have been

1 raised in the Complaint, arising out of the facts or conduct alleged therein with respect to
2 violations of Proposition 65 as it pertains to the Covered Products, and thus avoid prolonged and
3 costly litigation. Nothing in this Consent Judgment nor compliance with this Consent Judgment
4 shall constitute or be construed as an admission by any of the Parties or by any of their respective
5 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
6 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
7 issue of law, or violation of law, including, but not limited to, any facts or conclusions of law
8 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law
9 or equitable requirements relating to Lead in the Covered Products.

10 **2.2** Except as expressly set forth herein, nothing in this Consent Judgment shall
11 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
12 current or future legal proceedings unrelated to this case. This Consent Judgment is the product
13 of negotiation and compromise and is accepted by PERVINE/BAKERY for purposes of settling,
14 compromising, and resolving issues disputed in this action. However, this section shall not
15 diminish or otherwise affect the obligations, responsibilities and duties of PERVINE/BAKERY
16 under this Consent Judgment.

17 **3. JURISDICTION AND VENUE**

18 For purposes of this Consent Judgment and any further court action that may become
19 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
20 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
21 over PERVINE/BAKERY as to the acts alleged in the Complaint, that venue is proper in Alameda
22 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
23 resolution of all claims up through and including the Effective Date which were or could have
24 been asserted in this action based on the facts alleged in the Notices and Complaint.

25 **4. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

26 **4.1** Beginning on the Effective Date, PERVINE/BAKERY shall be permanently
27 enjoined from manufacturing for sale in the State of California, "Distributing into the State of
28 California," or directly selling in the State of California, any Covered Products which expose a

1 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day, as
2 determined by the Testing and Quality Control Methodology under Section 4.4. If any of the
3 Covered Products expose consumers in California to a “Daily Lead Exposure Level” of more
4 than 0.5 micrograms per day, as determined by the Testing and Quality Control Methodology
5 under Section 4.4, PERVINE/BAKERY must comply with the warning requirements under
6 Section 4.2.

7 **4.1.1** As used in this Consent Judgment, the term “Distributing into the State
8 of California” shall mean to directly ship a Covered Product into California for sale in
9 California or to sell a Covered Product to a distributor that PERVINE/BAKERY knows or has
10 a good faith reason to know will sell the Covered Product in California.

11 **4.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
12 Level” shall be measured in micrograms, and shall be calculated using the following formula:
13 micrograms of lead per gram of product, multiplied by grams of product per serving of the
14 product (using the largest serving size appearing on the product label), multiplied by servings
15 of the product per day (using the largest number of recommended daily servings appearing on
16 the label), which equals micrograms of lead exposure per day. If the label contains no
17 recommended daily servings, then the number of recommended daily servings shall be one.

18 **4.2 Clear and Reasonable Warnings**

19 If PERVINE/BAKERY is required to provide a warning pursuant to Section 4.1, the
20 following warning must be utilized (“Warning”):

21 **WARNING:** Consuming this product can expose you to chemicals including lead which is
22 [are] known to the State of California to cause [cancer and] birth defects or other
reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

23 PERVINE/BAKERY shall use the phrase “cancer and” in the Warning if PERVINE/BAKERY has
24 reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as
25 determined pursuant to the quality control methodology set forth in Section 4.4 or if
26 PERVINE/BAKERY has reason to believe that another Proposition 65 chemical is present which
27 may require a cancer warning.

28 The Warning shall be securely affixed to or printed upon the container or label of each

1 Covered Product. If the Warning is provided on the label, it must be set off from other
2 surrounding information and enclosed in a box. In addition, for any Covered Product sold over
3 the internet, the Warning shall appear on the checkout page when a California delivery address is
4 indicated for any purchase of any Covered Product. An asterisk or other identifying method
5 must be utilized to identify which products on the checkout page are subject to the Warning. In
6 no event shall any internet or website Warning be contained in or made through a link.

7 The Warning shall be at least the same size as the largest of any other health or safety
8 warnings also appearing on the website or on the label or container of PERVINE/BAKERY's
9 product packaging and the word "WARNING" shall be in all capital letters and in bold print. No
10 statements intended to or likely to have the effect of diminishing the impact of the Warning on the
11 average lay person shall accompany the Warning. Further, no statements may accompany the
12 Warning that state or imply that the source of the listed chemical has an impact on or results in a
13 less harmful effect of the listed chemical.

14 PERVINE/BAKERY must display the above Warning with such conspicuousness, as
15 compared with other words, statements or designs on the label or container, or on its website, if
16 applicable, to render the Warning likely to be read and understood by an ordinary individual under
17 customary conditions of purchase or use of the product.

18 4.3 Conforming Covered Products

19 A Conforming Covered Product is a Covered Product for which the "Daily Lead Exposure
20 Level" is no greater than 0.5 micrograms of lead per day as determined by the quality control
21 methodology described in Section 4.4.

22 4.4 Testing and Quality Control Methodology

23 4.4.1 Beginning within one year of the Effective Date, PERVINE/BAKERY
24 shall arrange for lead testing of the Covered Products at least once a year for a minimum of five
25 consecutive years by arranging for testing of five randomly selected samples of each of the
26 Covered Products, in the form intended for sale to the end-user, which PERVINE/BAKERY
27 intends to sell or is manufacturing for sale in California, directly selling to a consumer in
28 California or "Distributing into the State of California." If tests conducted pursuant to this

1 Section demonstrate that no Warning is required for a Covered Product during each of five
2 consecutive years, then the testing requirements of this Section will no longer be required as to
3 that Covered Product. However, if during or after the five-year testing period,
4 PERVINE/BAKERY changes ingredient suppliers for any of the Covered Products and/or
5 reformulates any of the Covered Products, PERVINE/BAKERY shall test that Covered Product
6 within 60 days thereof to confirm compliance with the injunctive terms set forth herein, in
7 addition to the annual testing required by this Agreement.

8 **4.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
9 lead detection result of the five (5) randomly selected samples of the Covered Products will be
10 controlling. In the event that test results from only one (1) of the five (5) randomly selected
11 samples results in a “Daily Lead Exposure Level” of more than 0.5 micrograms per day, as
12 determined by the Testing and Quality Control Methodology under Section 4.4 (the “result in
13 question”), and the “Daily Lead Exposure Level” from the result in question is less than 1.0
14 micrograms per day, then PERVINE/BAKERY may conduct one additional test from the same
15 lot that produced the result in question, and the highest lead detection result of the five (5)
16 randomly selected samples of the Covered Products that remain after excluding the result in
17 question will be controlling.

18 **4.4.3** All testing pursuant to this Consent Judgment shall be performed using a
19 laboratory method that complies with the performance and quality control factors appropriate
20 for the method used, including limit of detection, qualification, accuracy, and precision that
21 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
22 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

23 **4.4.4** All testing pursuant to this Consent Judgment shall be performed by an
24 independent third party laboratory certified by the California Environmental Laboratory
25 Accreditation Program or an independent third-party laboratory that is registered with the
26 United States Food & Drug Administration.

27 **4.4.5** Nothing in this Consent Judgment shall limit PERVINE/BAKERY’s
28 ability to conduct, or require that others conduct, additional testing of the Covered Products,

1 including the raw materials used in their manufacture.

2 **4.4.6** Within thirty (30) days of ERC's written request, PERVINE/BAKERY
3 shall deliver lab reports obtained pursuant to Section 4.4 to ERC. PERVINE/BAKERY shall
4 retain all test results and documentation for a period of five years from the date of each test.

5 **5. SETTLEMENT PAYMENT**

6 **5.1** In full satisfaction of all potential civil penalties, additional settlement payments,
7 attorney's fees, and costs, PERVINE/BAKERY shall make a total payment of \$400,000.00
8 ("Total Settlement Amount") to ERC within 10 days of the Effective Date ("Due Date").

9 PERVINE/BAKERY shall make this payment by wire transfer to ERC's account, for which
10 ERC will give PERVINE/BAKERY the necessary account information. The Total Settlement
11 Amount shall be apportioned as follows:

12 **5.2** \$141,000.00 shall be considered a civil penalty pursuant to California Health
13 and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$105,750.00) of the civil
14 penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in
15 the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health
16 and Safety Code section 25249.12(c). ERC will retain the remaining 25% (\$35,250.00) of the
17 civil penalty.

18 **5.3** \$20,115.97 shall be distributed to ERC as reimbursement to ERC for reasonable
19 costs incurred in bringing this action.

20 **5.4** \$105,114.32 shall be distributed to ERC as an Additional Settlement Payment
21 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
22 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
23 caused by PERVINE/BAKERY in this matter. These activities are detailed below and support
24 ERC's overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
25 supplement products in California. ERC's activities have had, and will continue to have, a direct
26 and primary effect within the State of California because California consumers will be benefitted
27 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by
28

1 providing clear and reasonable warnings to California consumers prior to ingestion of the
2 products.

3 Based on a review of past years' actual budgets, ERC is providing the following list of
4 activities ERC engages in to protect California consumers through Proposition 65 citizen
5 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
6 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
7 supplement products that may contain lead and are sold to California consumers. This work
8 includes continued monitoring and enforcement of past consent judgments and settlements to
9 ensure companies are in compliance with their obligations thereunder, with a specific focus on
10 those judgments and settlements concerning lead. This work also includes investigation of new
11 companies that ERC does not obtain any recovery through settlement or judgment; (2)
12 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary
13 Compliance Program by acquiring products from companies, developing and maintaining a case
14 file, testing products from these companies, providing the test results and supporting
15 documentation to the companies, and offering guidance in warning or implementing a self-
16 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up
17 to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated
18 products that reach California consumers by providing access to free testing for lead in dietary
19 supplement products (Products submitted to the program are screened for ingredients which are
20 suspected to be contaminated, and then may be purchased by ERC, catalogued, sent to a
21 qualified laboratory for testing, and the results shared with the consumer that submitted the
22 product).

23 ERC shall be fully accountable in that it will maintain adequate records to document and
24 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are
25 being spent only for the proper, designated purposes described in this Consent Judgment. ERC
26 shall provide the Attorney General, within thirty days of any request, copies of documentation
27 demonstrating how such funds have been spent.

1 **5.5** \$115,882.88 shall be distributed to Aqua Terra Aeris Law Group as
2 reimbursement of ERC's attorney's fees, while \$17,886.83 shall be distributed to ERC for its
3 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
4 costs.

5 **5.6** In the event that PERVINE/BAKERY fails to remit the Total Settlement
6 Amount owed under Section 4 of this Consent Judgment on or before the Due Date,
7 PERVINE/BAKERY shall be deemed to be in material breach of its obligations under this
8 Consent Judgment. ERC shall provide written notice of the delinquency to
9 PERVINE/BAKERY via electronic mail. If PERVINE/BAKERY fails to deliver the Total
10 Settlement Amount within five (5) days from the written notice, the Total Settlement Amount
11 shall accrue interest at the statutory judgment interest rate provided in the California Code of
12 Civil Procedure section 685.010. Additionally, PERVINE/BAKERY agrees to pay ERC's
13 reasonable attorney's fees and costs for any efforts to collect the payment due under this
14 Consent Judgment.

15 **6. MODIFICATION OF CONSENT JUDGMENT**

16 **6.1** This Consent Judgment may be modified, except for the Settlement Payment
17 provisions provided for in Section 5, only (i) by written stipulation of the Parties and upon entry
18 by the Court of a modified consent judgment or (ii) by motion of either Party pursuant to Section
19 6.3 or 6.4 and upon entry by the Court of a modified consent judgment.

20 **6.2** If PERVINE/BAKERY seeks to modify this Consent Judgment under Section
21 6.1, then PERVINE/BAKERY must provide written notice to ERC of its intent ("Notice of
22 Intent"). If ERC seeks to meet and confer regarding the proposed modification in the Notice of
23 Intent, then ERC must provide written notice to PERVINE/BAKERY within thirty (30) days of
24 receiving the Notice of Intent. If ERC notifies PERVINE/BAKERY in a timely manner of
25 ERC's intent to meet and confer, then the Parties shall meet and confer in good faith as
26 required in this Section. The Parties shall meet in person or via telephone within thirty (30)
27 days of ERC's notification of its intent to meet and confer. Within thirty (30) days of such
28 meeting, if ERC disputes the proposed modification, ERC shall provide to

1 PERVINE/BAKERY a written basis for its position. The Parties shall continue to meet and
2 confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should
3 it become necessary, the Parties may agree in writing to different deadlines for the meet-and-
4 confer period.

5 **6.3** In the event that PERVINE/BAKERY initiates or otherwise requests a
6 modification under Section 6.1, and the meet and confer process leads to a joint motion or
7 application for a modification of the Consent Judgment, PERVINE/BAKERY shall reimburse
8 ERC its costs and reasonable attorney's fees for the time spent in the meet-and-confer process
9 and filing and arguing the motion or application. However, ERC shall not be entitled to
10 reimbursement for attorney's fees if ERC does not expend more than five (5) hours of attorney
11 time on the joint motion or application for modification.

12 **6.4** Where the meet-and-confer process does not lead to a joint motion or
13 application in support of a modification of the Consent Judgment, then either Party may seek
14 judicial relief on its own.

15 **7. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
16 **JUDGMENT**

17 **7.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
18 this Consent Judgment.

19 **7.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
20 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
21 inform PERVINE/BAKERY in a reasonably prompt manner of its test results, including
22 information sufficient to permit PERVINE/BAKERY to identify the Covered Products at issue.
23 PERVINE/BAKERY shall, within thirty (30) days following such notice, provide ERC with
24 testing information, from an independent third-party laboratory meeting the requirements of
25 Sections 4.4.3 and 4.4.4, demonstrating PERVINE/BAKERY's compliance with the Consent
26 Judgment. The Parties shall first attempt to resolve the matter prior to ERC taking any further
27 legal action.

1 **8. APPLICATION OF CONSENT JUDGMENT**

2 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
3 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
4 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
5 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
6 application to any Covered Product which is distributed or sold exclusively outside the State of
7 California and which is not used by California consumers.

8 **9. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

9 **9.1** This Consent Judgment is a full, final, and binding resolution between ERC,
10 on behalf of itself and in the public interest, and PERVINE/BAKERY and its respective
11 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
12 suppliers, franchisees, licensees, customers (not including private label customers of
13 PERVINE/BAKERY), distributors, wholesalers, retailers, and all other upstream and
14 downstream entities in the distribution chain of any Covered Product, and the predecessors,
15 successors, and assigns of any of them (collectively, "Released Parties"). ERC, on behalf of
16 itself and in the public interest, hereby fully releases and discharges the Released Parties from
17 any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties,
18 fees, costs, and expenses asserted, or that could have been asserted from the handling, use, or
19 consumption of the Covered Products, as to any alleged violation of Proposition 65 or its
20 implementing regulations arising from the failure to provide Proposition 65 warnings on the
21 Covered Products regarding lead up to and including the Effective Date.

22 **9.2** ERC on its own behalf only, and PERVINE/BAKERY on its own behalf
23 only, further waive and release any and all claims they may have against each other for all
24 actions or statements made or undertaken in the course of seeking or opposing enforcement of
25 Proposition 65 in connection with the Notices and Complaint up through and including the
26 Effective Date, provided, however, that nothing in Section 9 shall affect or limit any Party's
27 right to seek to enforce the terms of this Consent Judgment.

28 **9.3** It is possible that other claims not known to the Parties, arising out of the facts

1 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
2 discovered. ERC on behalf of itself only, and PERVINE/BAKERY on behalf of itself only,
3 acknowledge that this Consent Judgment is expressly intended to cover and include all such
4 claims up through and including the Effective Date, including all rights of action therefore.
5 ERC and PERVINE/BAKERY acknowledge that the claims released in Sections 9.1 and 9.2
6 above may include unknown claims, and nevertheless waive California Civil Code section
7 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
9 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
10 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
11 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
12 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
13 DEBTOR OR RELEASED PARTY.

12 ERC on behalf of itself only, and PERVINE/BAKERY on behalf of itself only, acknowledge
13 and understand the significance and consequences of this specific waiver of California Civil
14 Code section 1542.

15 **9.4** Compliance with the terms of this Consent Judgment shall be deemed to
16 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
17 in the Covered Products as set forth in the Notices and Complaint.

18 **9.5** Nothing in this Consent Judgment is intended to apply to any occupational or
19 environmental exposures arising under Proposition 65, nor shall it apply to any of
20 PERVINE/BAKERY's products other than the Covered Products.

21 **10. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

22 In the event that any of the provisions of this Consent Judgment are held by a court to be
23 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

24 **11. GOVERNING LAW**

25 The terms and conditions of this Consent Judgment shall be governed by and construed in
26 accordance with the laws of the State of California. In the event that Proposition 65 is repealed, or
27 otherwise invalidated, by regulation or case law, and as a result of such repeal or invalidation the
28 Covered Products are no longer subject to Proposition 65, then PERVINE/BAKERY shall have no

1 further obligations as to the injunctive terms pursuant to this Consent Judgment with respect to,
2 and to the extent that, the Covered Products are so affected.

3 **12. PROVISION OF NOTICE**

4 All notices required to be given to either Party to this Consent Judgment by the other shall
5 be in writing and sent to the following agents listed below via first-class mail or via electronic mail
6 where required. Courtesy copies via email may also be sent.

7 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

8 Chris Heptinstall, Executive Director, Environmental Research Center
9 3111 Camino Del Rio North, Suite 400
10 San Diego, CA 92108
11 Ph: (619) 500-3090
12 Email: chris.heptinstall@erc501c3.org

11 With a copy to:

12 MATTHEW C. MACLEAR
13 ANTHONY M. BARNES
14 AQUA TERRA AERIS LAW GROUP
15 490 43rd Street, Suite 108
16 Oakland, CA 94609
17 Ph: 415-568-5200
18 Email: mcm@atalawgroup.com

19 **PERVINE FOODS, LLC, individually and doing business as CHEF ROBERT IRVINE'S
20 FIT CRUNCH; BAKERY BARN, INC., individually and doing business as CHEF
21 ROBERT IRVINE'S FIT CRUNCH**

22 Jim Perich
23 Bakery Barn, Inc.
24 111 Terence Drive
25 Pittsburgh, PA 15236
26 Ph: (412) 655-1113

27 With a copy to:

28 CELESTE M. BRECHT
MATTHEW M. GURVITZ
VENABLE, LLP
2049 Century Park E, Ste 2300
Los Angeles, CA 90067
Ph: 310-229-9900
Email: cmbrecht@venable.com
mmgurvitz@venable.com

1 **13. COURT APPROVAL**

2 **13.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
3 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
4 Consent Judgment.

5 **13.2** If the California Attorney General objects to any term in this Consent Judgment,
6 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
7 prior to the hearing on the motion.

8 **13.3** If this Consent Judgment is not approved by the Court, the Parties shall meet
9 and confer to determine whether to modify the terms of the Consent Judgment and to resubmit
10 it to the Court for approval. In the event, after completing the meet and confer process, the
11 Parties do not reach an agreement to modify and resubmit the Consent Judgment to the Court,
12 (a) this Consent Judgment and any and all prior agreements relating to the Consent Judgment
13 reached between the Parties herein shall terminate and become null and void, and the action
14 shall revert to the status that existed prior to the execution date of this Consent Judgment; and
15 (b) no term of this Consent Judgment or any draft thereof, or of the negotiation, documentation,
16 or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any
17 such matter be admissible in evidence at trial for any purpose in this action, or in any other
18 proceeding.

19 **14. EXECUTION AND COUNTERPARTS**

20 This Consent Judgment may be executed in counterparts, which taken together shall be
21 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid
22 as the original signature.

23 **15. DRAFTING**

24 The terms of this Consent Judgment have been reviewed by the respective counsel for each
25 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
26 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
27 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
28 and no provision of this Consent Judgment shall be construed against any Party, based on the fact

1 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
2 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
3 equally in the preparation and drafting of this Consent Judgment.

4 **16. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

5 If a dispute arises with respect to either Party's compliance with the terms of this Consent
6 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in
7 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be
8 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

9 **17. ENFORCEMENT**

10 ERC may, by motion or order to show cause before the Superior Court of Alameda
11 County, enforce the terms and conditions contained in this Consent Judgment. In any action
12 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
13 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
14 To the extent the failure to comply with the Consent Judgment constitutes a violation of
15 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,
16 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by
17 law for failure to comply with Proposition 65 or other laws.

18 **18. ENTIRE AGREEMENT, AUTHORIZATION**

19 **18.1** This Consent Judgment contains the sole and entire agreement and
20 understanding of the Parties with respect to the entire subject matter herein, and any and all
21 prior discussions, negotiations, commitments, and understandings related hereto. No
22 representations, oral or otherwise, express or implied, other than those contained herein have
23 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
24 herein, shall be deemed to exist or to bind any Party.

25 **18.2** Each signatory to this Consent Judgment certifies that he or she is fully
26 authorized by the Party he or she represents to stipulate to this Consent Judgment.
27
28

1 19. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF
2 CONSENT JUDGMENT

3 This Consent Judgment has come before the Court upon the request of the Parties. The
4 Parties request the Court to fully review this Consent Judgment and, being fully informed
5 regarding the matters which are the subject of this action, to:

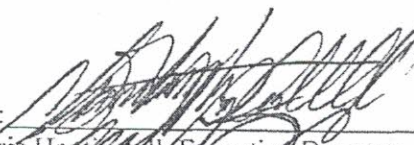
6 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
7 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
8 been diligently prosecuted, and that the public interest is served by such settlement; and

9 (2) Make the findings pursuant to California Health and Safety Code section
10 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

11 IT IS SO STIPULATED:

12 Dated: 8/30/, 2019

ENVIRONMENTAL RESEARCH
CENTER, INC.

13
14
15 By: 
Chris Heptinstall, Executive Director

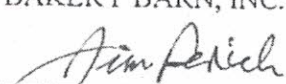
16 Dated: 9/6/, 2019

PERVINE FOODS, LLC

17
18
19 By: Patrick Comacchiulo
Its: Chief Executive Officer

20
21 Dated: 9/6/, 2019


BAKERY BARN, INC.

22
23 By: 
Jim Perich
Its: Executive Vice President

1 APPROVED AS TO FORM:


2
3 Dated: 08/30/2019

AQUA TERRA AERIS LAW GROUP

4
5 By: 
6 Matthew C. Maclear
7 Anthony M. Barnes
8 Attorneys for Plaintiff Environmental
9 Research Center, Inc.

10
11 Dated: Sept. 6, 2019

VENABLE, LLP


12 By: 
13 Celeste M. Brecht
14 Matthew M. Gurvitz
15 Bryan J. Weintrop
16 Attorneys for Defendants Pervine Foods,
17 LLC, individually and dba Chef Robert
18 Irvine's Fit Crunch; Bakery Barn, Inc.,
19 individually and dba Chef Robert Irvine's
20 Fit Crunch

1 **[PROPOSED] ORDER AND JUDGMENT**

2 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is
3 approved and Judgment is hereby entered according to its terms.

4 IT IS SO ORDERED, ADJUDGED AND DECREED.

5
6 Dated: 11/19, 2019

7 

8 Judge of the Superior Court

9 **BRAD SELIGMAN**

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

DECLARATION OF SERVICE BY MAIL -
STIPULATED CONSENT JUDGMENT

Case Number: RG18 920840

Case Name: ENVIRONMENTAL RESEARCH CENTER VS. PERVINE FOODS LLC, ET AL.

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 11/19/2019

Chad Finke
Executive Officer, Clerk of the Superior Court

By: Dameda K Scott Deputy Clerk
Dameda Scott

Matthew Maclear Aqua Terra Aeris Law Group 490 43 rd Street, Suite 108 Oakland, CA 94609	
Celeste m. Brecht VENABLE LLP 2049 Century Park E, Suite 2300 Los Angeles, CA 90067	