

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Civil Complex Center
751 W. Santa Ana Blvd
Santa Ana, CA 92701

SHORT TITLE: CalSafe Research Center, Inc. vs. Mary's Gone Crackers, Inc

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
SERVICE**

CASE NUMBER:
30-2021-01187926-CU-TT-CXC

I certify that I am not a party to this cause. I certify that the following document(s), Judgment dated 05/10/23, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on May 10, 2023, at 3:38:44 PM PDT. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

MAY 10 2023

DAVID H. YAMASAKI, Clerk of the Court

BY: D. MIRANDA, DEPUTY

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF ORANGE

17 CALSAFE RESEARCH CENTER, INC., a
18 California non-profit corporation

19 Plaintiff,

20 v.

21 MARY'S GONE CRACKERS, INC, A
22 Delaware Corporation; and ~~DOES 1 to 10,~~

23 Defendants.

Case No. 30-2021-01187926-CU-TT-CXC

STIPULATED CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

Assigned for all purposes to:

Hon. Lon F. Hurwitz, Dept. CX103

Action Filed: March 5, 2021

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26 **1. INTRODUCTION**

27 **1.1** This Consent Judgment is entered into by and between CALSAFE RESEARCH
28 CENTER, INC., ("CRC") on the one hand, and MARY'S GONE CRACKERS, INC

1 ("Defendant" or "MGC") on the other hand, with CRC and MGC each individually referred to
2 as a "Party" and collectively referred to as the "Parties."

3 **1.2** CRC is a 501(c)(3) non-profit corporation organized under the state of California,
4 acting in the interest of the general public. It seeks to promote awareness of exposures to toxic
5 chemicals and to improve human health by reducing or eliminating hazardous substances
6 contained in consumer products and encouraging corporate responsibility.

7 **1.3** MGC employs ten or more individuals and is a "person in the course of doing
8 business" for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health
9 and Safety Code section 25249.6 *et seq.* ("Proposition 65").

10 **General Allegations**

11
12 **1.4** CRC alleges that MGC manufactures, imports, sells, and distributes for sale
13 Products that contain acrylamide. CRC further alleges that MGC does so without providing a
14 sufficient health hazard warning as required by Proposition 65 and related Regulations. Pursuant
15 to Proposition 65, acrylamide is listed as a chemical known to cause cancer and reproductive
16 harm.

17 **Notices of Violation**

18 **1.5** On October 29, 2020, CRC served MGC, Albertsons/Vons, the California
19 Attorney General, and all other required public enforcement agencies with a 60-Day Notice of
20 Violation of California Health and Safety Code section 25249.6 *et seq.* ("Notice"). The Notice
21 alleged that MGC violated Proposition 65 by failing to sufficiently warn consumers in California
22 of the health hazards associated with exposures to acrylamide contained in its "Mary's Gone
23 Crackers Inc., Herb Crackers". No public enforcer has commenced or is otherwise prosecuting
24 an action to enforce the violations alleged in the Notice.

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25 **Product Description**

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27 **1.6** For purposes of this Consent Judgment, the "Product," "Products," or "Covered
28 Products" are defined as MGC's Herb Crackers that allegedly contain acrylamide and are

1 manufactured, imported, sold, or distributed for sale in California by Defendant and Releasees.

2
3 **Complaint**

4 **1.7** On March 5, 2021 CRC filed a Complaint against MGC for the alleged violations
5 of Health and Safety Code section 25249.6 that are the subject of the Notice ("Complaint").

6 **No Admission**

7 **1.8** MGC denies the material factual and legal allegations of the Notice and
8 Complaint and maintains that all of the products it has manufactured, imported, sold, and/or
9 distributed for sale in California, including Products, have been, and are, in compliance with all
10 laws. Nothing in this Consent Judgment shall be construed as an admission of any fact, finding,
11 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
12 Judgment be construed as an admission of any fact, finding, conclusion of law, issue of law, or
13 violation of law. This Section shall not, however, diminish or otherwise affect MGC's
14 obligations, responsibilities, and duties under this Consent Judgment.

15 **1.9** For purposes of this Consent Judgment and the Complaint only, CRC and
16 Defendant stipulate that this Court has jurisdiction over the allegations of violations contained
17 in the Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint,
18 that venue is proper in the County of Orange, and that this Court has jurisdiction to enter this
19 Consent Judgment as a full and final resolution of all claims which were or could have been
20 raised in the Complaint based on the facts alleged therein. The Parties further stipulate that the
21 Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to
22 Proposition 65 and Code of Civil Procedure section 664.6.

23 **Effective Date**

24 **1.10** For purposes of this Consent Judgment, the term "Effective Date" means the date
25 on which the Court grants the motion for approval of this Consent Judgment, as discussed in
26 Section 5. Since the reformulation described below must ensure compliance with applicable
27 regulatory requirements, the Compliance Date means the date six (6) months after the Effective
28 Date.

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1 **2. INJUNCTIVE RELIEF: ACRYLAMIDE REDUCTION**

2 **2.1 Reformulation of Product.** Any Products that are manufactured by MGC on and
3 after the Compliance Date that are thereafter sold in California or distributed for sale in
4 California shall not exceed 350 ppb acrylamide based on the testing program described in Section
5 2.2. As used in this Section 2.1, "distributed for sale in California" means to directly ship
6 Products into California or to sell Products to a distributor MGC knows will sell Products in
7 California.

8 **2.2 Testing**

- 9 a. Compliance with the reformulation level shall be determined using LC-MS/MS
10 (Liquid Chromatograph-Mass Spectrometry), GC/MS (Gas Chromatography/Mass
11 Spectrometry), or any other testing method agreed upon by the Parties. On the
12 Compliance Date, and continuing thereafter, MGC shall not manufacture Products that
13 will be sold or offered for sale in California that exceed 350 ppb, such concentration
14 to be determined by use of a test performed by a laboratory accredited by the State of
15 California, a federal agency, or a nationally recognized organization.
- 16 b. On the Compliance Date and again, six (6) months after the Compliance date, MGC
17 shall arrange for testing under Section 2.2, random testing of Three (3) lots of Products
18 (See Section 1.6, *Supra*). No further testing shall be required unless MGC materially
19 modifies the ingredients or cooking process of Products, at which point testing shall
20 recommence on an annual basis for at least three years.

21 **2.3 Clear and Reasonable Warnings.** For Products that contain acrylamide in a
22 concentration exceeding the ppb level set forth in Section 2.1 and as determined through testing
23 pursuant to Section 2.2 above, and which are manufactured and packaged for distribution for
24 authorized sale or use in California on or after the Compliance Date, MGC shall provide the
25 following Proposition 65 warning:
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27
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1 **WARNING:** Consuming this product can expose you to chemicals
2 including Acrylamide, which is known to the State of California to
3 cause cancer and birth defects or other reproductive harm. For more
information go to www.P65Warnings.ca.gov/food.

4 The Warning shall be securely affixed to or printed upon the package or label of each
5 Covered Product. Defendant must display the above Warning with such conspicuousness, as
6 compared with other words, statements or designs on the label or package, to render the Warning
7 likely to be read and understood by an ordinary individual under customary conditions of
8 purchase or use of the product.

9 Extra-Territorial Effect. Nothing in this Consent Judgment requires that warnings be
10 given for any Products that are not shipped for sale in California.

11 **2.3.1 California Chamber of Commerce v. Xavier Becerra Case No. 2:19-cv-**
12 **02019.** To the extent the implementation and/or enforcement of Proposition 65 is altered as a
13 result of the above referenced Cal. Chamber matter; MGC's duties and obligations under this
14 Consent Judgment may be modified to conform with any such ruling without objection from the
15 Plaintiff and with approval from the Court.

16 **2.4 Sell-Through Period.** Notwithstanding anything else in this Consent Judgment,
17 the Products that are manufactured on or prior to the Compliance Date shall be subject to release
18 of liability pursuant to this Consent Judgment, without regard to when such Products were, or
19 are in the future, distributed or sold to customers. As a result, the obligation of MGC, or any
20 Releasees (if applicable), do not apply to these Products manufactured on or prior to the
21 Compliance Date.

22 **3. MONETARY SETTLEMENT TERMS**

23 **3.1 Settlement Amount.** MGC shall pay Forty-Six thousand Five-Hundred Dollars
24 (\$46,500.00) in settlement and total satisfaction of all the claims referred to in the Notice, the
25 Complaint, and this Consent Judgment. This includes civil penalties in the amount of Six-
26 Thousand Five Hundred Dollars (\$6,500.00) pursuant to Health and Safety Code section 25249.
27 7(b) and attorney's fees and costs in the amount of thirty-seven thousand dollars (\$37,000)
28 pursuant to Code of Civil Procedure section 1021.5. This also includes and Additional Settlement

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1 Payment ("ASP") in the amount of Three Thousand Dollars (\$3,000.00) to CRC pursuant to
2 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204.

3 **3.2 Civil Penalty.** The portion of the settlement attributable to civil penalties in the
4 amount of \$6,500.00 shall be allocated according to Health and Safety Code section
5 25249.12(c)(l) and (d), with seventy-five percent (75%) of the penalty paid to the California
6 Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five
7 percent (25%) of the penalty paid to CRC. Within fourteen (14) days of the Effective Date, MGC
8 shall issue two separate checks for the Civil Penalty amount to (a) "OEHHA" in the amount of
9 \$4,875.00; and to (b) CRC in the amount of \$1,625.00. The CRC portion of the civil penalty
10 shall be made payable to Manning Law APC, Client Trust and CalSafe Research Center, Inc.
11 and associated with taxpayer identification number 84-4419173. This payment shall be delivered
12 to Manning Law, APC, 20062 SW Birch St. Suite 200, Newport Beach, CA 92660.

13 The OEHHA portion of the civil penalty shall be made payable to OEHHA and
14 associated with taxpayer identification number 68-0284486. This payment shall be delivered as
15 follows:

16 For United States Postal Service Delivery:

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

22 For Non-United States Postal Service Delivery:

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

28 MGC agrees to provide CRC's counsel with a copy of the check payable to OEHHA,
simultaneous with its penalty payments to CRC. CRC and its counsel will provide completed
IRS 1099, W-9, or other tax forms as required. Relevant information is set out below:

- CalSafe Research Center, Inc, associated with taxpayer identification number 84-4419173, CalSafe Research Center, Inc. 4533 MacArthur Blvd. Ste. 230, Newport Beach,

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1 CA 92660.

- 2 • Manning Law, APC, associated with taxpayer identification number 83-0502205,
3 Manning Law, APC, 20062 SW Birch St. Suite 200, Newport Beach, CA 92660.

4 **3.3 Attorney's Fees and Costs.** The portion of the settlement attributable to
5 attorney's fees and costs in the amount of thirty-seven-thousand dollars (\$37,000) shall be paid to
6 CRC's counsel, who are entitled to attorney's fees and costs incurred by it in this action, including
7 but not limited to investigating potential violations, bringing this matter to MGC's attention, as
8 well as litigating and negotiating a settlement in the public interest.

9 MGC shall provide its payment to CRC's counsel in one check, payable to the Manning
10 Law, APC, and delivered to 20062 SW Birch St. Suite 200, Newport Beach, CA 92660, within
11 fourteen (14) days of the Effective Date.

12 **3.2 Additional Settlement Payment ("ASP").** \$3,000.00 as an Additional
13 Settlement Payment ("ASP") to CRC pursuant to Health & Safety Code § 25249.7(b), and
14 California Code of Regulations, Title 11, § 3204. CRC intends to restrict use of the ASPs
15 received from this Consent Judgment to the following purposes: the funds will be placed in
16 CRC's Toxics in Food Fund and used to support CRC programs and activities that seek to
17 educate the public about acrylamide and other toxic chemicals in food, to work with the food
18 industry and agriculture interests to reduce exposure to acrylamide and other toxic chemicals in
19 food, and to thereby reduce the public health impacts and risks of exposure to acrylamide and
20 other toxic chemicals in food sold in California. The payment pursuant to this Section shall be
21 made payable to Manning Law APC, Client Trust and CalSafe Research Center and associated
22 with taxpayer identification number 84-4419173. This payment shall be delivered to Manning
23 Law, APC, 20062 SW Birch St. Suite 200, Newport Beach, CA 92660 within fourteen (14) days
24 of the Effective Date.

25 Based on the review of the previous years' budget, one-hundred-percent (100%) of the
26 ASP funds will be utilized for CRC's enforcement program. This work includes obtaining,
27 shipping, analyzing and testing products that may contain acrylamide and are sold to California
28 consumers. This work also includes monitoring and enforcement of past consent judgments and

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1 settlements to ensure companies are in compliance with their obligations thereunder, with a
2 specific focus on those judgments and settlements concerning acrylamide. Finally, this work
3 includes investigation of new companies and testing of products that CRC does not obtain any
4 recovery through settlement or judgment. CRC will use ASP funds to reimburse itself for other
5 Proposition 65 investigations where CRC incurs testing costs but does not make a recovery and
6 for which no recovery is anticipated. This reimbursement will allow CRC to continue to benefit
7 the public with its' enforcement activities.

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 CRC's Release of Proposition 65 Claims.** CRC acting on its own behalf and in
10 the public interest releases MGC from all claims for violations of Proposition 65 up through the
11 Effective Date based on exposure to acrylamide from Covered Products as set forth in the Notice
12 of Violation. Compliance with the terms of this Consent Judgment constitutes compliance with
13 Proposition 65 with respect to exposures to acrylamide from Covered Products as set forth in the
14 Notice of Violation. This includes MGC's owners, parents, subsidiaries, affiliated entities under
15 common ownerships, its directors, officers, agents, employees, attorneys, and each entity to
16 whom MGC directly or indirectly distributes or sells Products, including but not limited to
17 downstream distributors, wholesales, customers, retailers (including Albertsons/Vons),
18 franchisees, cooperative members and licensees, (collectively, the "Releasees"). Releasees
19 include Defendant, its parent, and all subsidiaries and affiliates thereof and their respective
20 employees, agents, and assigns that sell MGC's Products. This Consent Judgment is a full, final
21 and binding resolution of all claims that were or could have been asserted against MGC and/or
22 Releasees for violations of Proposition 65 up through the Effective Date based on exposure to
23 acrylamide from Covered Products as set forth in the Notice of Violation.

24 **4.2 CRC's Individual Release of Claims.** CRC, in its individual and/or corporate
25 capacity, also provides a release to MGC and/or Releasees, which shall be a full and final accord
26 and satisfaction of, as well as a bar to, all actions, causes of action, obligations, costs, expenses,
27 attorney's fees, damages, losses, claims, liabilities, and demands of every nature, character, and
28 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual

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1 exposures to acrylamide in Products manufactured, imported, sold, or distributed by MGC before
2 the Compliance Date.

3 **4.3 MGC's Release of CRC.** MGC, on its own behalf, and on behalf of Releasees
4 as well as its past and current agents, representatives, attorneys, successors, and assignees, hereby
5 waives any and all claims against CRC and its past, current and future agents, officers, board
6 members, shareholders, representatives, attorneys, successors, and assignees, as well as affiliates
7 and other representatives, for any and all actions taken or statements made by CRC and its
8 attorneys and other representatives, whether in the course of investigating claims, otherwise
9 seeking to enforce Proposition 65 against it, in this matter or with respect to the Products.

10 **5. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved by the Court and shall be null
12 and void if it is not approved by the Court within one year after it has been fully executed by the
13 Parties, or by such additional time as the Parties may agree to in writing.

14 This Consent Judgment shall be submitted to the Court for entry by noticed motion. If
15 this Consent Judgment is not approved by the Court, it shall be of no force or effect and may not
16 be used by CRC or Defendant for any purpose.

17 **6. SEVERABILITY**

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

21 **7. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the state of
23 California as applied within the state of California. In the event that Proposition 65 is
24 repealed, or is otherwise rendered inapplicable for reasons, including but not limited to
25 changes in the law, then MGC may provide written notice to CRC of any asserted change,
26 and shall have no further injunctive obligations pursuant to this Consent Judgment with
27 respect to, and to the extent that, the Products are so affected. The Court shall retain
28 jurisdiction over the parties to enforce the settlement under CCP § 664.6 until performance

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1 in full of the terms of the settlement.

2 **8. PROVISION OF NOTICE**

3 When any Party is entitled to receive any notice under this consent Judgment, the notice
4 shall be sent by first class mail or electronic mail and address set forth in this Paragraph. Any
5 Party may modify the person and address to whom the notice is to be sent by sending the other
6 Party notice by certified mail, return receipt requested. Said change shall take effect on the date
7 the return receipt is signed by the Party receiving the change.

8 Notices shall be sent to:

9 For CRC

10 Joseph R. Manning, Jr.
11 Manning Law, APC
12 20062 SW Birch St. Suite 200
Newport Beach, CA 92660

For MGC

Natalie Rainer
Keller and Heckman, LLP
Three Embarcadero Center, STE 1420
San Francisco, CA 94111

13 Any Party may, from time to time, specify in writing to the other, a change of address to which
14 notices and other communications shall be sent.

15 **9. COUNTERPARTS; DIGITAL SIGNATURES**

16 This Consent Judgment may be executed in counterparts and by facsimile signature, each
17 of which shall be deemed an original, and all of which, when taken together, shall constitute one
18 and the same document.

19 Each signatory to the Parties' stipulation for entry of this Consent Judgment has certified
20 that he or she is fully authorized by the Party he or she represents to stipulate to this Consent
21 Judgment, to enter into and execute the stipulation on behalf of the Party represented, and legally
22 to bind that Party.

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23 **10. POST EXECUTION ACTIVITIES**

24 CRC agrees to comply with the reporting form requirements referenced in Health and
25 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and
26 Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the
27 settlement, which motion CRC shall draft and file. In furtherance of obtaining such approval, the
28 Parties agree to mutually employ their best efforts, including those of their counsel, to support

1 the entry of this agreement as judgment, and to obtain judicial approval of their settlement in a
2 timely manner. For purposes of this Section, "best efforts" shall include, at a minimum,
3 supporting the motion for approval, responding to any objection that any third-party may make,
4 and appearing at the hearing before the Court if so requested.

5
6 **11. MODIFICATION OF CONSENT JUDGMENT**

7 **11.1 Procedure for Modification.** This Consent Judgment may be modified by
8 written agreement of CRC and Defendant, after noticed motion, and upon entry of a modified
9 consent judgment by the Court thereon, or upon motion of CRC or Defendant as provided herein
10 or as otherwise provided by Law, and upon entry of a modified consent judgment by the Court.
11 Before filing an application with the Court for a modification to this Consent Judgment,
12 Defendant shall meet and confer with the CRC to determine whether the CRC will consent to
13 the proposed modification. If a proposed modification is agreed upon, then Defendant and CRC
14 will present the modification to the Court by means of a stipulated modification to the Consent
15 Judgment. Otherwise, Defendant shall bear the burden of establishing that the modification is
16 appropriate based on the occurrence of a condition set forth in this Consent Judgment or as
17 otherwise provided by law.

18 **11.2 Change in Proposition 65.** If Proposition 65 or its implementing regulations are
19 changed from their terms as they exist on the date of entry of this Consent Judgment, either Party
20 or both Parties may seek modification of the Consent Judgment through stipulated or noticed
21 motion as follows:

22 **11.2.1** If the change establishes that warnings for acrylamide in Covered Products are
23 not required, Settling Defendant may seek a modification of this Consent
24 Judgment to eliminate its duties to warn and/or its duty to reduce acrylamide
25 levels.

26 **11.2.2** If the change establishes that the warnings provided by this Consent Judgment
27 would not comply with Proposition 65 or its implementing regulations, either
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1 Party may seek a modification of the consent Judgment to conform the judgment
2 to the change in law.

3 **11.2.3** If the change establishes by regulation an acrylamide concentration level for Herb
4 Cracker products, that is higher than the Target Level set in this Consent
5 Judgment, MGC may receive the benefit of that higher concentration level for its
6 Covered Products. In such instance, MGC shall provide 60 days' written notice
7 to CRC.

8 **12. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
10 have read, understand, and agree to all of the terms and conditions contained herein.

11 **13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

16 **14. ENFORCEMENT**

17 CRC may, by motion or application for an order to show cause before this Court, enforce
18 the terms and conditions contained in this Consent Judgment. In any such proceeding, CRC may
19 seek recovery of reasonable costs, fees and/or remedies for failure to comply with the Consent
20 Judgment,

21 **15. ENTIRE AGREEMENT**

22 **15.1** This Consent Judgment contains the sole and entire agreement and understanding
23 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
24 negotiations, commitments and understandings related hereto. No representations, oral or
25 otherwise, express or implied, other than those contained herein have been made by any Party
26 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
27 to exist or to bind any of the Parties.
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1 **15.2.** The Consent Judgment is the result of mutual drafting and no ambiguity found
2 herein shall be construed in favor of or against any Party.

4 APPROVED AS TO FORM:	APPROVED AS TO FORM:
5 Date: June <u>10</u> , 2022	Date: June 10, 2022
6 By: <u>Joseph R. Manning Jr.</u>	By: <u>Natalie Rainer</u>
7 Joseph R. Manning Jr.	Natalie Rainer
8 Counsel for Plaintiff	Counsel for Defendant
9 AGREED TO:	AGREED TO:
10 CALSAFE RESEARCH CENTER, INC	MARY'S GONE CRACKERS, INC.
11 Date: <u>6/24/22</u>	Date: <u>June 10, 2022</u>
12 By: <u>[Signature]</u>	By: <u>S. Matsui</u>
13 Title: <u>CEO</u>	Shuji (Sergio) Matsui
	Title: <u>President & CEO</u>

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

15
16 Dated: **MAY 10 2023**

17 [Signature]
18 Hon. Lon F. Hurwitz, Dept. CX103
19 Judge of the Superior Court
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