

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL
HEALTH, a non-profit corporation,

Plaintiff,

v.

MONDELEZ INTERNATIONAL, INC.,
et al.,

Defendants.

Case No.: RG-13-677800

**[PROPOSED] CONSENT JUDGMENT AS
TO FANTASY COOKIE CORPORATION**

1 **1. INTRODUCTION**

2 1.1 The Parties to this Consent Judgment are the Center For Environmental Health, a
3 California non-profit corporation (“CEH”), and Fantasy Cookie Corporation (“Settling Defendant”).
4 The Parties enter into this Consent Judgment to settle certain claims asserted by CEH against
5 Settling Defendant as set forth in the operative complaint (“Complaint”) in the above-captioned
6 matter. This Consent Judgment covers cookies containing molasses, ginger, or both molasses and
7 ginger sold by Settling Defendant that have been or will be sold or offered for sale to California
8 consumers (“Covered Products”).

9 1.2 On May 16, 2014, CEH provided a 60-day Notice of Violation under Proposition 65
10 to the California Attorney General, the District Attorneys of every county in California, the City
11 Attorneys of every California city with a population greater than 750,000 and Settling Defendant,
12 alleging that Settling Defendant violated Proposition 65 by exposing persons to lead and lead
13 compounds (“Lead”) contained in Covered Products without first providing a clear and reasonable
14 Proposition 65 warning.

15 1.3 Settling Defendant is a corporation or other business entity that manufactures,
16 distributes, sells or offers for sale Covered Products that are sold or offered for sale or has done so
17 in the past.

18 1.4 On May 1, 2013, CEH filed the Complaint in the above-captioned matter. The
19 original complaint was amended on December 16, 2014 to add Settling Defendant as a named
20 defendant.

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

1 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the
2 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
3 Consent Judgment constitute or be construed as an admission by the Parties of any fact, conclusion
4 of law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive
5 or impair any right, remedy, argument or defense the Parties may have in any other pending or
6 future legal proceedings. This Consent Judgment is the product of negotiation and compromise and
7 is accepted by the Parties solely for purposes of settling, compromising, and resolving issues
8 disputed in this Action.

9 **2. INJUNCTIVE RELIEF**

10 2.1 **Specification Compliance Date.** To the extent it has not already done so, no more
11 than thirty (30) days after the date of entry of this Consent Judgment, if Settling Defendant
12 purchases any Covered Products from a third party that is not under common ownership (a
13 “Covered Product Supplier”), it shall provide the Reformulation Level set forth in Section 2.2 to
14 each Covered Product Supplier and shall instruct each such Covered Product Supplier to provide it
15 with Covered Products that comply with the Reformulation Level set forth in Section 2.2. If in the
16 future Settling Defendant purchases Covered Products from a Covered Product Supplier that it has
17 not previously provided with instructions regarding the Reformulation Level set forth in Section
18 2.2, Settling Defendant shall provide the Reformulation Level set forth in Section 2.2 to such
19 Covered Product Supplier prior to placing an initial order for Covered Products and instruct the
20 Covered Product Supplier to provide it with Covered Products that comply with the Reformulation
21 Level set forth in Section 2.2. Settling Defendant shall retain and make available to CEH upon
22 reasonable written request records of communications sent to and received from Covered Product
23 Suppliers that are related to the requirement of this Section 2.1 for a period of five (5) years from
24 the date of entry of this Consent Judgment (the “Effective Date”).

25 2.2 **Reformulation of Covered Products.** Settling Defendant shall not sell or offer for
26 sale a Covered Product that will be sold or offered to sale to California consumers that was
27 manufactured on or after the date that is the later of March 1, 2015 or the Effective Date (the
28

1 “Reformulation Deadline”) if that Covered Product contains more than thirty (30) parts per billion
2 (“ppb”) Lead by weight (the “Reformulation Level”), such concentration to be determined by use of
3 a test performed by an accredited laboratory using inductively coupled plasma mass spectrometry
4 (ICP-MS) equipment with a level of detection of at least ten (10) ppb. Upon inquiry by CEH
5 concerning a Covered Product’s best-by or sell-by (or equivalent) date or other code, Settling
6 Defendant shall promptly provide CEH with such Covered Product’s date of manufacture. Settling
7 Defendant has provided CEH with shelf life expiration dates for each Covered Product that it sells
8 and Settling Defendant represents and warrants that such information was true and accurate on the
9 date provided to CEH.

10 2.3 **Testing.** Except as provided in Section 2.5, to ensure compliance with Section 2.2,
11 Settling Defendant shall conduct random testing of Covered Products and take the follow-up actions
12 described in this section (“Validation Testing”), provided however, that if Settling Defendant
13 purchases Covered Products from another Settling Defendant, only the Settling Defendant that sold
14 the Covered Products to the other Settling Defendant need perform Validation Testing on those
15 Covered Products.

16 2.3.1 Covered Products To Be Tested. Validation Testing shall be performed
17 on a quarterly basis for each “type” of Covered Product Settling Defendant manufactures or
18 arranges to be manufactured on or after the Reformulation Deadline; such Validation Testing shall
19 be performed on samples drawn randomly from single production lots of each “type” of Covered
20 Product manufactured during that quarter. For purposes of this Consent Judgment a “type” of a
21 Covered Product is either each individual SKU of Covered Products or a group of Covered Products
22 which CEH and Settling Defendant have agreed in writing has materially the same characteristics
23 based on the type, supplier and amount of ginger or molasses used in its recipe or formula.

24 2.3.2 Methods of Testing. Settling Defendant shall conduct Validation Testing
25 pursuant to one of the following methods: (1) the FDA sample preparation protocol discussed in the
26 method entitled “Elemental Analysis Manual: Section 4.4 Inductively Coupled Plasma-Atomic
27
28

1 Emission Spectrometric Determination of Elements in Food Using Microwave Assisted Digestion”¹
2 or (2) a microwave- or heat-assisted acid digestion method employing high-purity reagents. In
3 either event, the laboratory shall digest at least 0.5 grams of each sample taken from a properly
4 homogenized random selection of a complete package of a Covered Product from a particular
5 production lot, and shall analyze each such sample without further dilution using ICP-MS and with
6 an instrument quantitation limit corresponding to less than three (3) micrograms of Lead in the
7 finished product.

8 2.3.3 Laboratories Conducting Validation Testing. Any Validation Testing
9 shall be performed by a laboratory meeting at least one of the following standards: Environmental
10 Laboratory Certification from the State of California, Department of Health Services,
11 Environmental Laboratory Accreditation Program; NSF International; American Association for
12 Laboratory Accreditation for Chemical Testing; International Standards Organization/IEC via
13 ANSI-ASQ; or an in-house laboratory or other facility experienced in testing for lead levels in foods
14 that complies with the Production and Process Control System; Requirements for Laboratory
15 Operations set forth in 21 C.F.R. Part 111, Subpart J, including but not limited to the requirements
16 for written procedures, requirements for laboratory control processes, requirements for laboratory
17 methods and examination, record retention policies, and other laboratory requirements.
18 Laboratories deemed to meet these requirements are listed on Exhibit B.

19 2.3.4 Duration of Testing. In the event that the Validation Testing
20 demonstrates compliance with the Reformulation Level by Settling Defendant for six (6) continuous
21 quarters in which production of a type of Covered Product has occurred, Settling Defendant may
22 send written notice to CEH and thereafter may cease Validation Testing for that type of Covered
23 Product; provided however, if there is a material change in the type or level of ginger or molasses
24 used in a Covered Product that is reasonably likely to affect the Lead levels in the product, then
25

26 _____
27 ¹ The referenced FDA test protocol may be found at which can be found at
28 <http://www.fda.gov/Food/FoodScienceResearch/LaboratoryMethods/ucm204245.htm>.

1 Settling Defendant shall arrange for testing for a minimum of three consecutive production quarters
2 after that change.

3 2.3.5 Covered Products That Exceed Reformulation Level. If a Validation
4 Testing result indicates that a type of a Covered Product exceeds the Reformulation Level, Settling
5 Defendant shall ensure that all Covered Products from the same production lot as those from which
6 the sample of the Covered Product(s) that exceeded the Reformulation Level were drawn as well as
7 other lots of the same type of Covered Product produced in the same calendar quarter that were not
8 directly subject to Validation Testing (the “Non-Compliant Products”) will not be sold or offered
9 for sale to California consumers.

10 2.3.5.1 Notwithstanding the foregoing, if the results of Validation Testing of
11 a sample of a type of Covered Product exceeds the Reformulation Level, Settling Defendant may
12 collect up to three (3) more samples of the Covered Product from the same production lot and have
13 those samples tested in accordance with Section 2.3. If the results of Validation Testing of all of the
14 additional samples of a type of Covered Product collectively yield an arithmetic mean of no more
15 than thirty (30) ppb Lead by weight, Settling Defendant may treat that type of Covered Product as
16 meeting the Reformulation Level for that Validation Testing cycle as long as no result for a sample
17 exceeds fifty (50) ppb Lead. If a sample result exceeds fifty (50) ppb Lead, Settling Defendant may
18 collect three (3) more samples of the Covered Product from the same production lot and have those
19 samples tested in accordance with Section 2.3. Provided that none of those additional test results
20 exceed forty (40) ppb, those additional test results shall then be used in place of the sample that
21 exceeded fifty (50) ppb in determining whether the arithmetic mean of Validation Test results for
22 the Covered Product exceeded the Reformulation Level.

23 2.3.6 Records. The testing reports and results of the Validation Testing
24 performed pursuant to this Consent Judgment shall be retained by Settling Defendant for four (4)
25 years and made available to CEH upon reasonable request.

26 2.4 **Good Faith Commitment to Pursue Further Lead Reduction.** Except as
27 provided in Section 2.5, Settling Defendant shall continue to take, or cause to be taken, good faith
28

1 and commercially reasonable efforts to further reduce the Lead content of its Covered Products with
2 a goal of Covered Products having a consistent Lead content of seventeen (17) ppb or less. These
3 efforts shall include, at a minimum, efforts to further adjust recipes and formulas that will reduce
4 Lead content in Covered Products and attempts to secure Covered Product ingredients such as
5 molasses and ginger with lower Lead content. Within fifteen days of the Reformulation Deadline,
6 and annually thereafter for two more years, Settling Defendant shall submit to CEH a written report
7 of the activities it has undertaken to effectuate its good faith commitment under this paragraph. If
8 Settling Defendant has test results demonstrating that all of its Covered Products have a consistent
9 Lead content of seventeen (17) ppb or less and it provides such documentation to CEH, or if CEH
10 and Settling Defendant otherwise agree in writing, then Settling Defendant need not submit any
11 subsequent annual report to CEH pursuant to this paragraph.

12 **2.5 Products Not Subject to Testing.** The requirements of Sections 2.3 and 2.4 shall
13 not apply to any type of Covered Product for which CEH and Settling Defendant agree in writing
14 that such sections shall not apply.

15 **3. ENFORCEMENT**

16 **3.1 General Enforcement Provisions.** CEH may, by motion or application for an order
17 to show cause before this Court, enforce the terms and conditions contained in this Consent
18 Judgment. Any action to enforce alleged violations of Section 2.2 by Settling Defendant shall be
19 brought exclusively pursuant to this Section 3, and as applicable be subject to the meet and confer
20 requirement of Section 3.2.4.

21 **3.2 Enforcement of Reformulation Commitment.**

22 **3.2.1 Notice of Violation.** In the event that CEH identifies a Covered Product
23 that was sold or offered for sale to California consumers with a best-by or sell-by (or equivalent)
24 date or other code that reflects that the Covered Product was manufactured on or after March 1,
25 2015 (based on either the information provided to CEH by Settling Defendant or after first giving
26 Settling Defendant an opportunity to identify the manufacture date as provided in Section 2.2), and
27 for which CEH has laboratory test results showing that the Covered Product has a Lead level
28

1 exceeding the Reformulation Level, CEH may issue a Notice of Violation pursuant to this Section.
2 Such Notice of Violation shall be based upon a test result sufficient to establish an exceedance of
3 the Reformulation Level as it is to be evaluated under Section 2.3; the results employed shall also
4 meet the sampling, preparation, testing, and laboratory criteria specified under Section 2.3.

5 3.2.2 Service of Notice of Violation and Supporting Documentation.

6 3.2.2.1 Subject to Section 3.2.1, the Notice of Violation shall be sent to the
7 person(s) identified in Exhibit A to receive notices for Settling Defendant, and must be served
8 within 45 days of the date the Covered Products at issue were purchased or otherwise acquired by
9 CEH, provided, however, that CEH may have up to an additional 45 days to send the Notice of
10 Violation if, notwithstanding CEH's good faith efforts, the test data required by Section 3.2.2.2
11 below cannot be obtained by CEH from its laboratory before expiration of the initial 45 day period.

12 3.2.2.2 The Notice of Violation shall, at a minimum, set forth: (a) the date
13 the alleged violation was observed; (b) the location at which the Covered Products were offered for
14 sale; (c) a description of the Covered Products giving rise to the alleged violation, including the
15 name and address of the retail entity from which the sample was obtained and if available
16 information that identifies the product lot; and (d) all test data obtained by CEH regarding the
17 Covered Products and supporting documentation sufficient for validation of the test results,
18 including any laboratory reports, quality assurance reports and quality control reports associated
19 with testing of the Covered Products.

20 3.2.3 Notice of Election of Response. No more than 30 days after effectuation
21 of service of a Notice of Violation, Settling Defendant shall provide written notice to CEH whether
22 it elects to contest the allegations contained in a Notice of Violation ("Notice of Election"). Failure
23 to provide a Notice of Election within 30 days of effectuation of service of a Notice of Violation
24 shall be deemed an election to contest the Notice of Violation.

25 3.2.3.1 If a Notice of Violation is contested, the Notice of Election shall
26 include all then-available documentary evidence regarding the alleged violation, including all test
27 data, if any. If Settling Defendant or CEH later acquires additional test or other data regarding the
28

1 alleged violation, it shall notify the other party and promptly provide all such data or information to
2 the party. Any test data used to contest a Notice of Violation shall meet the criteria of Section 2.3.

3 3.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and
4 Settling Defendant shall meet and confer to attempt to resolve their dispute. Within 30 days of
5 serving a Notice of Election contesting a Notice of Violation, and if no enforcement action or
6 application has been filed by CEH pursuant to Section 3.1, Settling Defendant may withdraw the
7 original Notice of Election contesting the violation and serve a new Notice of Election to not
8 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay
9 \$2,500 in addition to any payment required under this Consent Judgment. At any time, CEH may
10 withdraw a Notice of Violation, in which case for purposes of this Section 3.2 the result shall be as
11 if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of
12 Violation results within 30 days of a Notice of Election to contest, CEH may file an enforcement
13 motion or application pursuant to Section 3.1. In any such proceeding, CEH may seek whatever
14 fines, costs, penalties, attorneys' fees or other remedies are provided by law for failure to comply
15 with the Consent Judgment.

16 3.2.5 Non-Contested Matters. If Settling Defendant elects not to contest the
17 allegations in a Notice of Violation, it shall identify on a confidential basis to CEH (by proper
18 name, address of principal place of business and telephone number) the person or entity that sold
19 the Covered Products to Settling Defendant and the manufacturer and other entities in the upstream
20 chain of distribution of the Covered Product, provided that such information is reasonably available.
21 In addition, Settling Defendant shall undertake corrective action and make payments, if any, as set
22 forth below.

23 3.2.5.1 If the test data provided by CEH in support of the Notice of
24 Violation shows that Lead content in a Covered Product is above the Reformulation Level but less
25 than sixty (60) ppb, then Settling Defendant shall take the following corrective action and make the
26 following payments, if any:

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

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

25 3.2.5.2 If the test data provided by CEH in support of the Notice of
26 Violation reports a Lead content in a Covered Product of more than sixty (60) ppb, then the Settling
27 Defendant shall take the following corrective action and make the following payments:

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

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

26 3.2.6 Payments. Any payments under Section 3.2 shall be made by check
27 payable to the "Lexington Law Group" and shall be paid within 30 days of service of a Notice of
28

1 Election triggering a payment and which shall be used as reimbursement for costs for investigating,
2 preparing, sending and prosecuting Notices of Violation, and to reimburse attorneys' fees and costs
3 incurred in connection with these activities.

4 **3.3 Repeat Violations.** If Settling Defendant has received four or more Notices of
5 Violation concerning the same type of Covered Product that were not successfully contested or
6 withdrawn in any twelve (12) month period then, at CEH's option, CEH may seek whatever fines,
7 costs, penalties, attorneys' fees or other remedies that are provided by law for failure to comply
8 with the Consent Judgment. Prior to seeking such relief, CEH shall meet and confer with Settling
9 Defendant for at least 30 days to determine if Settling Defendant and CEH can agree on measures
10 that Settling Defendant can undertake to prevent future violations.

11 **4. PAYMENTS**

12 **4.1 Payments by Settling Defendant.** Within five (5) days of the entry of this Consent
13 Judgment, Settling Defendant shall pay amounts specified on Exhibit A.

14 **4.2 Allocation of Payments.** The total settlement amount for Settling Defendant shall
15 be paid in four separate checks and delivered as set forth below. Any failure by Settling Defendant
16 to comply with the payment terms herein shall, at CEH's discretion, be subject to a stipulated late
17 fee in the amount of \$100 for each day after the delivery date the payment is received. The late fees
18 required under this Section shall be recoverable, together with reasonable attorneys' fees, in an
19 enforcement proceeding brought pursuant to Section 3 of this Consent Judgment. The funds paid
20 by Settling Defendant shall be allocated as set forth on Exhibit A between the following categories
21 and made payable as follows:

22 **4.2.1** A civil penalty pursuant to Health & Safety Code § 25249.7(b). The
23 civil penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12
24 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard
25 Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment shall be
26 made payable to OEHHA and associated with taxpayer identification number 68-0284486. This
27 payment shall be delivered as follows:

1 For United States Postal Service Delivery:
Attn: Mike Gyurics
2 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
3 P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

4 For Non-United States Postal Service Delivery:
Attn: Mike Gyurics
5 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
6 1001 I Street, MS #19B
7 Sacramento, CA 95814

8 The CEH portion of the civil penalty payment shall be made payable to the Center For
9 Environmental Health and associated with taxpayer identification number 94-3251981. This
10 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
11 94117.

12 4.2.2 A payment in lieu of civil penalty to CEH pursuant to Health & Safety
13 Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH shall use such
14 funds to continue its work educating and protecting people from exposures to toxic chemicals,
15 including heavy metals. In addition, as part of its Community Environmental Action and Justice
16 Fund, CEH will use four (4) percent of such funds to award grants to grassroots environmental
17 justice groups working to educate and protect people from exposures to toxic chemicals. The
18 method of selection of such groups can be found at the CEH web site at www.ceh.org/justicefund.
19 The payment pursuant to this Section shall be made payable to the Center For Environmental Health
20 and associated with taxpayer identification number 94-3251981.

21 4.2.3 A reimbursement of a portion of CEH's reasonable attorneys' fees and
22 costs. The attorneys' fees and cost reimbursement check shall be made payable to the Lexington
23 Law Group and associated with taxpayer identification number 94-3317175. This payment shall be
24 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

1 **5. MODIFICATION AND DISPUTE RESOLUTION**

2 5.1 **Modification.** This Consent Judgment may be modified from time to time by
3 express written agreement of the Parties, with the approval of the Court, or by an order of this Court
4 upon motion and in accordance with law.

5 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
6 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
7 modify the Consent Judgment.

8 **6. CLAIMS COVERED AND RELEASE**

9 6.1 This Consent Judgment is a full, final and binding resolution between CEH on behalf
10 of itself and the public interest and Settling Defendant and Settling Defendant’s parents,
11 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
12 agents, shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to
13 which Settling Defendant directly or indirectly distributes or sells Covered Products, including but
14 not limited to distributors, wholesalers, customers, retailers, franchisees, licensors and licensees
15 (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn
16 about alleged exposure to Lead contained in Covered Products that were sold, distributed or offered
17 for sale by Settling Defendant prior to the Effective Date.

18 6.2 CEH, for itself, its agents, successors and assigns, releases, waives, and forever
19 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream
20 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or common
21 law claims that have been or could have been asserted by CEH individually or in the public interest
22 regarding the failure to warn about exposure to Lead arising in connection with Covered Products
23 manufactured by or for Settling Defendant prior to the Reformulation Deadline.

24 6.3 Compliance with the terms of this Consent Judgment by Settling Defendant shall
25 constitute compliance with Proposition 65 by Settling Defendant, its Defendant Releasees and its
26 Downstream Defendant Releasees with respect to any alleged failure to warn about Lead in
27 Covered Products manufactured, distributed or sold by Settling Defendant after the Effective Date.

1 **7. PROVISION OF NOTICE**

2 7.1 When CEH is entitled to receive any notice under this Consent Judgment, the notice
3 shall be sent by first class and electronic mail to:

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

9 7.2 When Settling Defendant is entitled to receive any notice under this Consent
10 Judgment, the notice shall be sent by first class and electronic mail to the person(s) identified in
11 Exhibit A.

12 7.3 Any Party may modify the person and address to whom the notice is to be sent by
13 sending the other Party notice by first class and electronic mail.

14 **8. COURT APPROVAL**

15 8.1 This Consent Judgment shall become effective as a contract upon the date signed by
16 CEH and Settling Defendant, whichever is later, provided however, that CEH shall also prepare and
17 file a Motion for Approval of this Consent Judgment and Settling Defendant shall support approval
18 of such Motion.

19 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
20 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

21 **9. GOVERNING LAW AND CONSTRUCTION**

22 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
23 California.

24 **10. ATTORNEYS' FEES**

25 10.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
26 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs unless
27 the unsuccessful Party has acted with substantial justification. For purposes of this Consent
28 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
Discovery Act of 1986, Code of Civil Procedure §§2016.010, et seq.

1 10.2 Notwithstanding Section 10.1, a Party who prevails in a contested enforcement
2 action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of Civil
3 Procedure §1021.5 against a Party that acted with substantial justification. The Party seeking such
4 an award shall bear the burden of meeting all of the elements of §1021.5, and this provision shall
5 not be construed as altering any procedural or substantive requirements for obtaining such an award.

6 10.3 Nothing in this Section 10 shall preclude a party from seeking an award of sanctions
7 pursuant to law.

8 **11. ENTIRE AGREEMENT**

9 11.1 This Consent Judgment contains the sole and entire agreement and understanding of
10 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
11 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
12 therein. There are no warranties, representations, or other agreements between the Parties except as
13 expressly set forth herein. No representations, oral or otherwise, express or implied, other than
14 those specifically referred to in this Consent Judgment have been made by any Party hereto. No
15 other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed
16 to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced
17 herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the
18 extent that they are expressly incorporated herein. No supplementation, modification, waiver, or
19 termination of this Consent Judgment shall be binding unless executed in writing by the Party to be
20 bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or
21 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such
22 waiver constitute a continuing waiver.

23 **12. SUBMISSION OF REPORTS AND DATA TO CEH**

24 12.1 For any report or information that Settling Defendant submits to CEH pursuant to
25 this Consent Judgment, Settling Defendant may make such a submission subject to the terms of the
26 protective order previously entered in this action and the protective order's terms shall apply to the
27 report or information as if it were still in effect.

1 **13. RETENTION OF JURISDICTION**

2 13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent
3 Judgment.

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

5 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
6 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute
7 the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

9 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
10 against an entity that is not a Settling Defendant on terms that are different than those contained in
11 this Consent Judgment.

12 **16. EXECUTION IN COUNTERPARTS**

13 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
14 means of facsimile or portable document format (pdf), which taken together shall be deemed to
15 constitute one document.

1 **IT IS SO ORDERED, ADJUDGED, AND**
2 **DECREED:**

3 Dated: _____, 2015

Judge of the Superior Court of the State of California

5 **IT IS SO STIPULATED:**

6 Dated: Feb 4, 2015

CENTER FOR ENVIRONMENTAL HEALTH



Signature

Charles Pizzano

Printed Name

Assistant Director

Title

15 Dated: _____, 2015

FANTASY COOKIE CORPORATION

Signature

Printed Name

Title

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Dated: _____, 2015

Judge of the Superior Court of the State of California

IT IS SO STIPULATED:

Dated: _____, 2015

CENTER FOR ENVIRONMENTAL HEALTH

Signature

Printed Name

Title

Dated: 2/2, 2015

FANTASY COOKIE CORPORATION

Joseph Semder
Signature

JOSEPH SEMDER
Printed Name

President
Title

EXHIBIT A

Settling Defendant

Settling Defendant: Fantasy Cookie Corporation

Defendant's Settlement Payment and Allocation:

Total Settlement Payment	\$60,000
Civil Penalty OEHHA Portion	\$5,950
Civil Penalty CEH Portion	\$1,980
Payment in Lieu of Civil Penalty	\$11,900
Attorneys' Fees and Costs	\$40,170

Person(s) to Receive Notices Pursuant to Section 8:

Michael B. Fisher
Buchalter Nemer
1000 Wilshire Boulevard
Suite 1500
Los Angeles, CA 90017-1730
mbfisher@buchalter.com

EXHIBIT B

Laboratories Deemed To Comply with the Requirements of Section 2.3.2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Curtis & Tompkins Laboratories

Covance Laboratories

Eurofins

Exova, Inc.

K Prime, Inc.

National Food Laboratory, Inc.

Silliker, Inc.