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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 COMMERCIAL BAKERIES CORP.**

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 Commercial Bakeries Corp. (“Commercial
4 Bakeries”). The Parties enter into this Consent Judgment to settle certain claims asserted by CEH
5 against Commercial Bakeries as set forth in the operative complaint (“Complaint”) in the above-
6 captioned matter. This Consent Judgment covers cookies containing molasses, ginger, or both
7 molasses and ginger sold by Commercial Bakeries that have been or will be sold or offered for sale to
8 California consumers (“Covered Products”).

9 1.2 On August 8, 2014, CEH provided a 60-day Notice of Violation under Proposition 65
10 to Commercial Bakeries, the California Attorney General, the District Attorneys of every county in
11 California and the City Attorneys of every California city with a population greater than 750,000,
12 alleging that Commercial Bakeries 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 Commercial Bakeries is a corporation or other business entity that manufactures,
16 distributes, sells or offers for sale Covered Products or has done so in the past.

17 1.4 On May 1, 2013, CEH filed the original Complaint in the above-captioned matter, and
18 on August 3, 2015, CEH filed the Second Amended Complaint. The Second Amended Complaint
19 names Commercial Bakeries as a defendant.

20 1.5 For purposes of this Consent Judgment only, CEH and Commercial Bakeries (the
21 “Parties”) stipulate that this Court has jurisdiction over the allegations of violations contained in the
22 Complaint and personal jurisdiction over Commercial Bakeries as to the acts alleged in the
23 Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to
24 enter and enforce this Consent Judgment as a full and final resolution of all claims which were or
25 could have been raised in the Complaint based on the facts alleged therein with respect to Covered
26 Products manufactured, distributed, offered for sale or sold by Commercial Bakeries.

27 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the
28 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the

1 Consent Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of
2 law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or
3 impair any right, remedy, argument or defense the Parties may have in any other pending or future
4 legal proceedings. This Consent Judgment is the product of negotiation and compromise and is
5 accepted by the Parties solely for purposes of settling, compromising, and resolving issues disputed
6 in this Action.

7 **2. INJUNCTIVE RELIEF**

8 2.1 **Specification Compliance Date.** To the extent it has not already done so, no more
9 than thirty (30) days after the date of entry of this Consent Judgment, if Commercial Bakeries
10 purchases any Covered Products from a third party that is not under common ownership (a “Covered
11 Product Supplier”), it shall provide the Reformulation Level set forth in Section 2.2 to each Covered
12 Product Supplier and shall instruct each such Covered Product Supplier to provide it with Covered
13 Products that comply with the Reformulation Level set forth in Section 2.2. If in the future
14 Commercial Bakeries purchases Covered Products from a Covered Product Supplier that it has not
15 previously provided with instructions regarding the Reformulation Level set forth in Section 2.2,
16 Commercial Bakeries shall provide the Reformulation Level set forth in Section 2.2 to such Covered
17 Product Supplier prior to placing an initial order for Covered Products and instruct the Covered
18 Product Supplier to provide it with Covered Products that comply with the Reformulation Level set
19 forth in Section 2.2. Commercial Bakeries shall retain and make available to CEH upon reasonable
20 written request records of communications sent to and received from Covered Product Suppliers that
21 are related to the requirement of this Section 2.1 for a period of five (5) years from the date of entry
22 of this Consent Judgment (the “Effective Date”).

23 2.2 **Reformulation of Covered Products.** Commencing on the date that is the later of the
24 Effective Date or May 31, 2016 (the “Compliance Date”), Commercial Bakeries shall not purchase,
25 manufacture, ship, sell or offer for sale any Covered Product that will be offered for sale to California
26 consumers that contains more than thirty (30) parts per billion (“ppb”) Lead by weight (the
27 “Reformulation Level”), such concentration to be determined by use of a test performed by an
28

1 accredited laboratory using inductively coupled plasma mass spectrometry (ICP-MS) equipment with
2 a level of detection of at least ten (10) ppb.

3 **2.3 Testing.** Except as provided in Section 2.5, to ensure compliance with Section 2.2,
4 Commercial Bakeries shall conduct random testing of Covered Products and take the follow-up
5 actions described in this section (“Validation Testing”).

6 **2.3.1 Covered Products To Be Tested.** Validation Testing shall be performed on
7 a quarterly basis for each “type” of Covered Product that will be offered for sale in California after
8 the Compliance Date. Such Validation Testing shall be performed on samples drawn randomly from
9 single production lots of each “type” of Covered Product manufactured during that quarter. For
10 purposes of this Consent Judgment a “type” of a Covered Product is either each individual SKU for
11 Covered Products or a group of Covered Products which CEH and Commercial Bakeries have agreed
12 in writing has materially the same characteristics based on the type, supplier and amount of ginger or
13 molasses used in its recipe or formula.

14 **2.3.2 Methods of Testing.** Commercial Bakeries shall conduct Validation
15 Testing pursuant to one of the following methods: (1) the FDA sample preparation protocol discussed
16 in the method entitled “Elemental Analysis Manual: Section 4.4 Inductively Coupled Plasma-Atomic
17 Emission Spectrometric Determination of Elements in Food Using Microwave Assisted Digestion;”¹
18 or (2) a microwave- or heat-assisted acid digestion method employing high-purity reagents. In either
19 event, the laboratory shall digest at least 0.5 grams of each sample taken from a properly
20 homogenized random selection of a complete package of a Covered Product from a particular
21 production lot, and shall analyze each such sample without further dilution using ICP-MS.

22 **2.3.3 Laboratories Conducting Validation Testing.** Any Validation Testing
23 shall be performed by a laboratory meeting at least one of the following standards: Environmental
24 Laboratory Certification from the State of California, Department of Health Services, Environmental
25 Laboratory Accreditation Program; NSF International; American Association for Laboratory
26 Accreditation for Chemical Testing; International Standards Organization/IEC via ANSI-ASQ; or an

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 in-house laboratory or other facility experienced in testing for lead levels in foods that complies with
2 the Production and Process Control System Requirements for Laboratory Operations set forth in 21
3 C.F.R. Part 111, Subpart J, including but not limited to the requirements for written procedures,
4 requirements for laboratory control processes, requirements for laboratory methods and examination,
5 record retention policies, and other laboratory requirements. Laboratories deemed to meet these
6 requirements are listed on Exhibit A.

7 2.3.4 Duration of Testing. In the event that the Validation Testing demonstrates
8 compliance with the Reformulation Level by Commercial Bakeries for six (6) continuous quarters in
9 which production of a type of Covered Product has occurred, Commercial Bakeries may send written
10 notice to CEH and thereafter may cease Validation Testing for that type of Covered Product;
11 provided however, if there is a material change in the type or level of ginger or molasses used in a
12 Covered Product that is reasonably likely to affect the Lead levels in the product, then Commercial
13 Bakeries shall arrange for testing for a minimum of three (3) consecutive production quarters after
14 that change.

15 2.3.5 Covered Products That Exceed Reformulation Level. If a Validation
16 Testing result indicates that a type of a Covered Product exceeds the Reformulation Level,
17 Commercial Bakeries shall ensure that all Covered Products from the same production lot as those
18 from which the sample of the Covered Product(s) that exceeded the Reformulation Level were drawn
19 as well as other lots of the same type of Covered Product produced in the same calendar quarter that
20 were not directly subject to Validation Testing (the “Non-Compliant Products”) will not be sold or
21 offered for sale to California consumers.

22 2.3.5.1 Notwithstanding the foregoing, if the Validation Testing results from a
23 sample of a type of Covered Product exceeds the Reformulation Level, Commercial Bakeries may
24 collect up to three (3) more samples of the Covered Product from the same production lot and have
25 those samples tested in accordance with Section 2.3. If the results of Validation Testing of all of the
26 additional samples of a type of Covered Product collectively yield an arithmetic mean of no more
27 than thirty (30) ppb Lead by weight, Commercial Bakeries may treat that type of Covered Product as
28 meeting the Reformulation Level for that Validation Testing cycle as long as no result for a sample

1 exceeds fifty (50) ppb Lead. If a sample result exceeds fifty (50) ppb Lead, Commercial Bakeries
2 may collect three (3) more samples of the Covered Product from the same production lot and have
3 those samples tested in accordance with Section 2.3. Provided that none of those additional test
4 results exceed forty (40) ppb, those additional test results shall then be used in place of the sample
5 that exceeded fifty (50) ppb in determining whether the arithmetic mean of Validation Test results for
6 the Covered Product exceeded the Reformulation Level.

7 2.3.6 Records. The testing reports and results of the Validation Testing
8 performed pursuant to this Consent Judgment shall be retained by Commercial Bakeries for four (4)
9 years and made available to CEH upon reasonable request.

10 2.4 **Good Faith Commitment to Pursue Further Lead Reduction.** Except as provided
11 in Section 2.5, Commercial Bakeries shall continue to take, or cause to be taken, good faith and
12 commercially reasonable efforts to further reduce the Lead content of its Covered Products with a
13 goal of Covered Products having a consistent Lead content of seventeen (17) ppb or less. These
14 efforts shall include, at a minimum, efforts to further adjust recipes and formulas that will reduce
15 Lead content in Covered Products and attempts to secure Covered Product ingredients such as
16 molasses and ginger with lower Lead content. Within sixty (60) days after days of the Effective
17 Date, and annually thereafter for two (2) more years, Commercial Bakeries shall submit to CEH a
18 written report of the activities it has undertaken to effectuate its good faith commitment under this
19 paragraph. If Commercial Bakeries has test results demonstrating that all of its Covered Products
20 have a consistent Lead content of seventeen (17) ppb or less and it provides such documentation to
21 CEH, or if CEH and Commercial Bakeries otherwise agree in writing, then Commercial Bakeries
22 need not submit any subsequent annual report to CEH pursuant to this paragraph.

23 2.5 **Products Not Subject to Testing.** The requirements of Sections 2.3 and 2.4 shall not
24 apply to any type of Covered Product for which CEH and Commercial Bakeries agree in writing that
25 such sections shall not apply.

26 **3. ENFORCEMENT**

27 3.1 **General Enforcement Provisions.** CEH may, by motion or application for an order
28 to show cause before this Court, enforce the terms and conditions contained in this Consent

1 Judgment. Any action to enforce alleged violations of Section 2.2 by Commercial Bakeries shall be
2 brought exclusively pursuant to this Section 3, and be subject to the meet and confer requirement of
3 Section 3.2.4 if it is applicable.

4 **3.2 Enforcement of Reformulation Commitment.**

5 3.2.1 Notice of Violation. In the event that CEH identifies a Covered Product
6 that was sold or offered for sale to California consumers after the Compliance Date, and for which
7 CEH has laboratory test results showing that the Covered Product has a Lead level exceeding the
8 Reformulation Level, CEH may issue a Notice of Violation pursuant to this Section. Such Notice of
9 Violation shall be based upon a test result sufficient to establish an exceedance of the Reformulation
10 Level as it is to be evaluated under Section 2.3; the results employed shall also meet the sampling,
11 preparation, testing and laboratory criteria specified under Section 2.3.

12 3.2.2 Service of Notice of Violation and Supporting Documentation.

13 3.2.2.1 Subject to Section 3.2.1, the Notice of Violation shall be sent to the
14 person(s) identified in Section 7.2 to receive notices for Commercial Bakeries, and must be served
15 within forty-five (45) days of the later of either the date the Covered Products at issue were purchased
16 or otherwise acquired by CEH or the date that CEH learns that the Covered Products were
17 manufactured or sold by Commercial Bakeries, provided, however, that: (i) CEH may have up to an
18 additional 45 days to provide Commercial Bakeries with the test data required by Section 3.2.2.2
19 below if it has not yet obtained such test data from its laboratory; and (ii) CEH may serve a Notice of
20 Violation to a supplier of a Covered Product so long as (a) the identity of the supplier cannot be
21 discerned from the labeling of the Covered Product, and (b) the Notice of Violation to the supplier is
22 served within 45 days of the date the supplier is identified by CEH.

23 3.2.2.2 The Notice of Violation shall, at a minimum, set forth: (a) the date the
24 alleged violation was observed; (b) the location at which the Covered Products were offered for sale;
25 (c) a description of the Covered Products giving rise to the alleged violation, including the name and
26 address of the retail entity from which the sample was obtained and if available information that
27 identifies the product lot; and (d) all test data obtained by CEH regarding the Covered Products and
28 supporting documentation sufficient for validation of the test results, including any laboratory

1 reports, quality assurance reports and quality control reports associated with testing of the Covered
2 Products.

3 3.2.3 Notice of Election of Response. No more than thirty (30) days after
4 effectuation of service of a Notice of Violation, Commercial Bakeries shall provide a written notice
5 to CEH stating whether it elects to contest the allegations contained in the Notice of Violation
6 (“Notice of Election”). Failure to provide a Notice of Election within thirty (30) days of effectuation
7 of service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.

8 3.2.3.1 If a Notice of Violation is contested, the Notice of Election shall
9 include all then-available documentary evidence regarding the alleged violation, including all
10 available data of testing performed pursuant to this Consent Judgment. If Commercial Bakeries or
11 CEH later acquires additional test or other data regarding the alleged violation, it shall notify the
12 other party and promptly provide all such data or information to the party. Any test data used to
13 contest a Notice of Violation shall meet the criteria of Section 2.3.

14 3.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and
15 Commercial Bakeries shall meet and confer to attempt to resolve their dispute. Within thirty (30)
16 days of serving a Notice of Election contesting a Notice of Violation, and if no enforcement action or
17 application has been filed by CEH pursuant to Section 3.1, Commercial Bakeries may withdraw the
18 original Notice of Election contesting the violation and serve a new Notice of Election to not contest
19 the violation, provided, however, that, in this circumstance, Commercial Bakeries shall pay \$2,500 in
20 addition to any payment required under this Consent Judgment. At any time, CEH may withdraw a
21 Notice of Violation, in which case for purposes of this Section 3.2 the result shall be as if CEH never
22 issued any such Notice of Violation. If no informal resolution of a Notice of Violation results within
23 thirty (30) days of a Notice of Election to contest, CEH may file an enforcement motion or
24 application pursuant to Section 3.1. In any such proceeding, CEH may seek whatever fines, costs,
25 penalties, attorneys’ fees or other remedies are provided by law for failure to comply with the
26 Consent Judgment.

27 3.2.5 Non-Contested Matters. If Commercial Bakeries elects to not contest the
28 allegations in a Notice of Violation and Commercial Bakeries did not manufacture the Covered

1 Product identified in the Notice of Violation, it shall identify on a confidential basis to CEH (by
2 proper name, address of principal place of business and telephone number) the person or entity that
3 sold the Covered Products to Commercial Bakeries and the manufacturer and other entities in the
4 upstream chain of distribution of the Covered Product, provided that such information is reasonably
5 available. In addition, Commercial Bakeries shall undertake corrective action and make payments, if
6 any, as set forth below.

7 3.2.5.1 If the test data provided by CEH in support of the Notice of Violation
8 shows that Lead content in a Covered Product is above the Reformulation Level but less than sixty
9 (60) ppb, then Commercial Bakeries shall take the following corrective action and make the
10 following payments, if any:

11 (a) Commercial Bakeries shall include in its Notice of Election a
12 detailed description with supporting documentation of the corrective action that it has undertaken or
13 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,
14 provide reasonable assurance that Commercial Bakeries has stopped selling or offering for sale in
15 California all Covered Products from the same lot as that of the Covered Products identified in
16 CEH's Notice of Violation. Commercial Bakeries shall make available to CEH for inspection and/or
17 copying records and correspondence regarding the corrective action. If there is a dispute over the
18 corrective action, Commercial Bakeries and CEH shall meet and confer pursuant to Section 3.2.4
19 before seeking any remedy in court. In no case shall CEH issue more than one Notice of Violation
20 per manufacturing lot of a type of Covered Product.

21 (b) If the Notice of Violation is the first Notice of Violation
22 received by a Commercial Bakeries under Section 3.2.5.1 that was not successfully contested or
23 withdrawn, no payment shall be required by that Commercial Bakeries. If the Notice of Violation is
24 the second, third or fourth Notice of Violation received by Commercial Bakeries under Section
25 3.2.5.1 that was not successfully contested or withdrawn, Commercial Bakeries shall pay \$5,000 for
26 each Notice of Violation. If Commercial Bakeries has received more than four (4) Notices of
27 Violation under Section 3.2.5.1 that were not successfully contested or withdrawn, Commercial
28 Bakeries shall pay \$10,000 for each subsequent Notice of Violation. If Commercial Bakeries

1 produces with its Notice of Election test data from the manufacturer or supplier of the Covered
2 Product that: (i) was conducted prior to the date CEH purchased the Covered Product that is the
3 subject of the Notice of Violation; (ii) was conducted on the same Covered Product from the same
4 production lot as the Covered Product that is the subject of the Notice of Violation; and (iii)
5 demonstrates Lead levels below the Reformulation Level as evaluated under Section 2.3, then any
6 payment under this Section shall be reduced by fifty percent (50%).

7 3.2.5.2 If the test data provided by CEH in support of the Notice of Violation
8 reports a Lead content in a Covered Product of more than sixty (60) ppb, then Commercial Bakeries
9 shall take the following corrective action and make the following payments:

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

26 (b) If the Notice of Violation is the first, second, third or fourth
27 Notice of Violation received by Commercial Bakeries under Section 3.2.5.2 that was not successfully
28 contested or withdrawn, Commercial Bakeries shall pay \$16,000 for each Notice of Violation. If

1 Commercial Bakeries has received more than four Notices of Violation under Section 3.2.5.2 that
2 were not successfully contested or withdrawn, Commercial Bakeries shall pay \$24,000 for each
3 Notice of Violation. If Commercial Bakeries produces with its Notice of Election test data on the
4 Covered Product that: (i) was conducted prior to the date CEH purchased the Covered Product that is
5 the subject of the Notice of Violation; (ii) was conducted on the same or same type of Covered
6 Product; and (iii) demonstrates Lead levels below the Reformulation Level as evaluated under
7 Section 2.3.4, then any payment under this Section shall be reduced by fifty percent.

8 3.2.6 Payments. Any payments under Section 3.2 shall be made by check
9 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a Notice
10 of Election triggering a payment and which shall be used as reimbursement for costs for
11 investigating, preparing, sending and prosecuting Notices of Violation, and to reimburse attorneys’
12 fees and costs incurred in connection with these activities.

13 3.3 **Repeat Violations.** If Commercial Bakeries has received four (4) or more Notices of
14 Violation concerning the same type of Covered Product that were not successfully contested or
15 withdrawn in any twelve (12) month period then, at CEH’s option, CEH may seek whatever fines,
16 costs, penalties, attorneys’ fees or other remedies that are provided by law for failure to comply with
17 the Consent Judgment. Prior to seeking such relief, CEH shall meet and confer with Commercial
18 Bakeries for at least thirty (30) days to determine if Commercial Bakeries and CEH can agree on
19 measures that Commercial Bakeries can undertake to prevent future violations.

20 **4. PAYMENTS**

21 4.1 **Payments by Commercial Bakeries.** Within five (5) days of the entry of this
22 Consent Judgment, Commercial Bakeries shall pay the total sum of \$70,000 as a settlement payment,
23 as further set forth in this Section 4.

24 4.2 **Allocation of Payments.** The total settlement amount for Commercial Bakeries shall
25 be paid in four (4) separate checks and delivered as set forth below. Any failure by Commercial
26 Bakeries to comply with the payment terms herein shall be subject to a stipulated late fee to be paid
27 by Commercial Bakeries in the amount of \$100 for each day the full payment is not received after the
28 due date set forth in Section 4.1. The late fees required under this Section shall be recoverable,

1 together with reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 3
2 of this Consent Judgment. The funds paid by Commercial Bakeries shall be allocated as set forth
3 below between the following categories and made payable as follows:

4 4.2.1 \$9,300 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).

5 The civil penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12
6 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard
7 Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment for \$6,975
8 shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486.

9 This payment shall be delivered as follows:

10 For United States Postal Service Delivery:

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

14 For Non-United States Postal Service Delivery:

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

18 The CEH portion of the civil penalty payment for \$2,325 shall be made payable to the
19 Center For Environmental Health and associated with taxpayer identification number 94-3251981.

20 This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
21 94117.

22 4.2.2 \$13,900 as a payment in lieu of additional civil penalty to CEH pursuant
23 to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b).

24 CEH shall use such funds to continue its work educating and protecting people from exposures to
25 toxic chemicals, including heavy metals. In addition, as part of its Community Environmental Action
26 and Justice Fund, CEH will use four percent (4%) of such funds to award grants to grassroots
27 environmental justice groups working to educate and protect people from exposures to toxic
28 chemicals. The method of selection of such groups can be found at the CEH web site at

1 www.ceh.org/justicefund. The payment pursuant to this Section shall be made payable to the Center
2 For Environmental Health and associated with taxpayer identification number 94-3251981. This
3 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
4 94117.

5 4.2.3 \$46,800 as a reimbursement of a portion of CEH’s reasonable attorneys’
6 fees and costs. The attorneys’ fees and cost reimbursement check shall be made payable to the
7 Lexington Law Group and associated with taxpayer identification number 94-3317175. This
8 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
9 94117.

10 **5. MODIFICATION AND DISPUTE RESOLUTION**

11 5.1 **Modification.** This Consent Judgment may be modified from time to time by express
12 written agreement of the Parties, with the approval of the Court, or by an order of this Court upon
13 motion and in accordance with law.

14 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
15 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to modify
16 the Consent Judgment.

17 **6. CLAIMS COVERED AND RELEASE**

18 6.1 This Consent Judgment is a full, final and binding resolution between CEH on behalf
19 of itself and the public interest and Commercial Bakeries and Commercial Bakeries’ parents,
20 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
21 agents, shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to
22 which Commercial Bakeries directly or indirectly distributes or sells Covered Products, including but
23 not limited to distributors, wholesalers, customers, retailers, franchisees, licensors and licensees
24 (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn
25 about alleged exposure to Lead contained in Covered Products that were sold, distributed or offered
26 for sale by Commercial Bakeries prior to the Compliance Date.

27 6.2 CEH, for itself, its agents, successors and assigns, releases, waives, and forever
28 discharges any and all claims against Commercial Bakeries, Defendant Releasees, and Downstream

1 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or common
2 law claims that have been or could have been asserted by CEH individually or in the public interest
3 regarding the failure to warn about exposure to Lead arising in connection with Covered Products
4 manufactured by or for Commercial Bakeries prior to the Compliance Date.

5 6.3 Compliance with the terms of this Consent Judgment by Commercial Bakeries shall
6 constitute compliance with Proposition 65 by Commercial Bakeries, its Defendant Releasees and its
7 Downstream Defendant Releasees with respect to any alleged failure to warn about Lead in Covered
8 Products manufactured, distributed or sold by Commercial Bakeries on and after the Compliance
9 Date.

10 **7. PROVISION OF NOTICE**

11 7.1 When CEH is entitled to receive any notice under this Consent Judgment, the notice
12 shall be sent by first class and electronic mail to:

13 Eric S. Somers
14 Lexington Law Group
15 503 Divisadero Street
16 San Francisco, CA 94117
17 esomers@lexlawgroup.com

18 7.2 When Commercial Bakeries is entitled to receive any notice under this Consent
19 Judgment, the notice shall be sent by first class and electronic mail to:

20 Sarah Esmaili
21 Arnold & Porter LLP
22 3 Embarcadero Center, 10th Floor
23 San Francisco, CA 94111
24 sarah.esmaili@aporter.com

25 7.3 Any Party may modify the person and address to whom the notice is to be sent by
26 sending the other Party notice by first class and electronic mail.

27 **8. COURT APPROVAL**

28 8.1 This Consent Judgment shall become effective as a contract upon the date signed by
CEH and Commercial Bakeries, whichever is later, provided however, that CEH shall also prepare
and file a Motion for Approval of this Consent Judgment and Commercial Bakeries shall support
approval of such Motion.

1 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
2 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

3 **9. GOVERNING LAW AND CONSTRUCTION**

4 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California.

6 **10. ATTORNEYS' FEES**

7 10.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
8 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs unless
9 the unsuccessful Party has acted with substantial justification. For purposes of this Consent
10 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
11 Discovery Act of 1986, Code of Civil Procedure §§2016.010, et seq.

12 10.2 Notwithstanding Section 10.1, a Party who prevails in a contested enforcement action
13 brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of Civil
14 Procedure §1021.5 against a Party that acted with substantial justification. The Party seeking such an
15 award shall bear the burden of meeting all of the elements of §1021.5, and this provision shall not be
16 construed as altering any procedural or substantive requirements for obtaining such an award.

17 10.3 Nothing in this Section 10 shall preclude a party from seeking an award of sanctions
18 pursuant to law.

19 **11. ENTIRE AGREEMENT**

20 11.1 This Consent Judgment contains the sole and entire agreement and understanding of
21 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
22 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
23 therein. There are no warranties, representations, or other agreements between the Parties except as
24 expressly set forth herein. No representations, oral or otherwise, express or implied, other than those
25 specifically referred to in this Consent Judgment have been made by any Party hereto. No other
26 agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist
27 or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral
28 or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they

1 are expressly incorporated herein. No supplementation, modification, waiver, or termination of this
2 Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby. No
3 waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver
4 of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a
5 continuing waiver.

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

7 12.1 For any report or information that Commercial Bakeries submits to CEH pursuant to
8 this Consent Judgment, Commercial Bakeries may make such a submission subject to the terms of
9 the protective order previously entered in this action and the protective order's terms shall apply to
10 the report or information as if it were still in effect.

11 **13. RETENTION OF JURISDICTION**

12 13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent
13 Judgment.

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

15 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by
16 the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the
17 Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

19 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
20 against an entity that is not Commercial Bakeries on terms that are different than those contained in
21 this Consent Judgment.

22 **16. EXECUTION IN COUNTERPARTS**

23 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
24 means of facsimile or portable document format (pdf), which taken together shall be deemed to
25 constitute one document.

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

3
4 Dated: _____, 2016

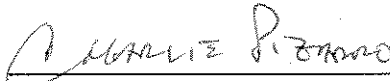
Judge of the Superior Court of the State of California


6 **IT IS SO STIPULATED:**

7
8 Dated: 11 March, 2016

CENTER FOR ENVIRONMENTAL HEALTH

9
10 
11 _____
Signature

12 
13 _____
Printed Name

14 
15 _____
Title

16
17 Dated: _____, 2016

COMMERCIAL BAKERIES CORP.

18
19 _____
Signature

20
21 _____
Printed Name

22
23 _____
Title

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

3
4 Dated: _____, 2016

Judge of the Superior Court of the State of California

6 **IT IS SO STIPULATED:**

7
8 Dated: _____, 2016

CENTER FOR ENVIRONMENTAL HEALTH

10
11 _____
Signature

12
13 _____
Printed Name

14
15 _____
Title

16
17 Dated: FEB 29, 2016

COMMERCIAL BAKERIES CORP.

18
19
20 _____
Signature

21
22 _____
Printed Name

23
24 _____
Title

EXHIBIT A

Laboratories Deemed To Comply with the Requirements of Section 2.3.2

Curtis & Tompkins Laboratories

Covance Laboratories

Eurofins

Exova, Inc.

K Prime, Inc.

National Food Laboratory, Inc.

Silliker, Inc.