

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*,  
  
Defendant.

Case No. RG-13-677800  
  
**[PROPOSED] CONSENT JUDGMENT AS  
TO DEWEY'S BAKERY, INC.**

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 Dewey’s Bakery, Inc., including its wholly-owned  
4 subsidiary Salem Baking Company (“Dewey’s”). The Parties enter into this Consent Judgment to  
5 settle certain claims asserted by CEH against Dewey’s as set forth in the operative complaint  
6 (“Complaint”) in the above-captioned matter. This Consent Judgment covers all cookies  
7 containing molasses, ginger, or both molasses and ginger sold by Dewey’s that have been or will  
8 be sold or offered for sale to California consumers (“Covered Products”).

9           1.2     On April 10, 2015, CEH provided a 60-day Notice of Violation under Proposition  
10 65 to Dewey’s, 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 Dewey’s violated Proposition 65 by exposing persons to lead and lead compounds  
13 (“Lead”) contained in Covered Products without first providing a clear and reasonable Proposition  
14 65 warning.

15           1.3     Dewey’s is a corporation that manufactures and sells, or offers for sale Covered  
16 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,  
18 and on August 3, 2015, CEH filed the Second Amended Complaint. The Second Amended  
19 Complaint names Dewey’s and Salem Baking as defendants in the action.

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

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

1 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
2 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
3 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any  
4 other pending or future legal proceedings. Dewey's specifically contends that at all times relevant  
5 to this action, its Covered Products were in conformity with Proposition 65 consistent with the  
6 holdings contained in *Environmental Law Foundation v. Beech-Nut Corp., et al.*, 235 Cal. App.  
7 4th 307 (2015). This Consent Judgment is the product of negotiation and compromise and is  
8 accepted by the Parties solely for purposes of settling, compromising, and resolving issues  
9 disputed in this Action.

## 10 **2. INJUNCTIVE RELIEF**

11 **2.1 Reformulation of Covered Products.** After the Effective Date, Dewey's shall not  
12 purchase, manufacture, ship, sell or offer for sale any Covered Product that will be offered for sale  
13 to California consumers that contains more than twenty-two (22) parts per billion ("ppb") Lead by  
14 weight (the "Reformulation Level"), such concentration to be determined by use of a test  
15 performed by an accredited laboratory using an AOAC approved testing method with a level of  
16 detection of at least ten (10) ppb.

17 **2.2 Testing.** Except as provided in Section 2.4, to ensure compliance with Section 2.1,  
18 Dewey's shall conduct random testing of Covered Products and take the follow-up actions  
19 described in this section ("Validation Testing").

20 **2.2.1 Covered Products To Be Tested.** Validation Testing shall be performed for  
21 one year following the entry of this Consent Judgment on a quarterly basis for each "type" of  
22 Covered Product that will be offered for sale in California. Such Validation Testing shall be  
23 performed on samples drawn randomly from single production lots of each "type" of Covered  
24 Product manufactured during that quarter. For purposes of this Consent Judgment a "type" of a  
25 Covered Product is either each individual SKU for Covered Products or a group of Covered  
26 Products which CEH and Dewey's have agreed in writing has materially the same characteristics  
27 based on its recipe or formula.

28

1                   2.2.2 Methods of Testing. The Parties shall conduct all testing under this Consent  
2 Judgment using AOAC approved testing methods with a level of detection of at least ten (10) ppb.  
3 The laboratory shall digest at least 0.5 grams of each sample taken from a properly homogenized  
4 random selection of a complete package of a Covered Product from a particular production lot,  
5 and shall analyze each such sample without further dilution using ICP-MS.

6                   2.2.3 Laboratories Conducting Validation Testing. Any testing shall be  
7 performed by a laboratory meeting at least one of the following standards: Environmental  
8 Laboratory Certification from the State of California, Department of Health Services,  
9 Environmental Laboratory Accreditation Program; NSF International; American Association for  
10 Laboratory Accreditation for Chemical Testing; International Standards Organization/IEC via  
11 ANSI-ASQ. Laboratories deemed to meet these requirements are listed on Exhibit A.

12                   2.2.4 Duration of Testing. In the event that the Validation Testing demonstrates  
13 compliance with the Reformulation Level by Dewey's for four (4) continuous quarters in which  
14 production of a type of Covered Product has occurred, Dewey's may send written notice to CEH  
15 and thereafter may cease Validation Testing for that type of Covered Product; provided however,  
16 if there is a material change in the type or level of ginger or molasses used in a Covered Product  
17 that is reasonably likely to affect the Lead levels in the product, then Dewey's shall arrange for  
18 testing for a minimum of three (3) consecutive production quarters after that change. CEH  
19 acknowledges that Dewey's has already provided two sets of test data demonstrating levels of lead  
20 in the tested covered products below twenty-two (22) ppb as of the date of the entry of this  
21 Consent Judgment.

22                   2.2.5 Covered Products That Exceed Reformulation Level. If a Validation  
23 Testing result indicates that a type of a Covered Product exceeds the Reformulation Level,  
24 Dewey's shall ensure that all Covered Products from the same production lot as those from which  
25 the sample of the Covered Product(s) that exceeded the Reformulation Level were drawn as well  
26 as other lots of the same type of Covered Product produced in the same calendar quarter that were  
27 not directly subject to Validation Testing (the "Non-Compliant Products") will not be sold or  
28 offered for sale to California consumers.

1                   2.2.5.1 Notwithstanding the foregoing, if the Validation Testing results  
2 from a sample of a type of Covered Product exceeds the Reformulation Level, Dewey's may  
3 collect up to three (3) more samples of the Covered Product from the same production lot and  
4 have those samples tested in accordance with Section 2.3. If the results of Validation Testing of  
5 all of the additional samples of a type of Covered Product collectively yield an arithmetic mean of  
6 less than twenty-two (22) ppb Lead by weight, Dewey's may treat that type of Covered Product as  
7 meeting the Reformulation Level for that Validation Testing cycle as long as no result for a  
8 sample exceeds fifty (50) ppb Lead. If a sample result exceeds fifty (50) ppb Lead, Dewey's may  
9 collect three (3) more samples of the Covered Product from the same production lot and have  
10 those samples tested in accordance with Section 2.3. Provided that none of those additional test  
11 results exceed forty (40) ppb, those additional test results shall then be used in place of the sample  
12 that exceeded fifty (50) ppb in determining whether the arithmetic mean of Validation Test results  
13 for the Covered Product exceeded the Reformulation Level.

14                   2.2.6 Records. The testing reports and results of the Validation Testing  
15 performed pursuant to this Consent Judgment shall be retained by Dewey's for four (4) years and  
16 made available to CEH upon reasonable request.

17                   2.3 **Products Not Subject to Testing**. The requirements of Sections 2.2 and 2.3 shall  
18 not apply to any type of Covered Product for which CEH and Dewey's agree in writing that such  
19 sections shall not apply.

20 **3. ENFORCEMENT**

21                   3.1 **General Enforcement Provisions**. The Parties may, by motion or application for  
22 an order to show cause before this Court, enforce the terms and conditions contained in this  
23 Consent Judgment. Any action to enforce alleged violations of Section 2.1 by Dewey's shall be  
24 brought exclusively pursuant to this Section 3, and be subject to the meet and confer requirement  
25 of Section 3.2.4 if it is applicable.

26                   3.2 **Enforcement of Reformulation Commitment**.

27                   3.2.1 Notice of Violation. In the event that CEH identifies a Covered Product  
28 that was sold or offered for sale to California consumers after the Effective Date, and for which

1 CEH has laboratory test results showing that the Covered Product has a Lead level exceeding the  
2 Reformulation Level, CEH may issue a Notice of Violation pursuant to this Section. Such Notice  
3 of Violation shall be based upon a test result sufficient to establish an exceedance of the  
4 Reformulation Level as it is to be evaluated under Section 2.2; the results employed shall also  
5 meet the sampling, preparation, testing and laboratory criteria specified under Section 2.2.

6 3.2.2 Service of Notice of Violation and Supporting Documentation.

7 3.2.2.1 Subject to Section 3.2.1, the Notice of Violation shall be sent to  
8 the person(s) identified in Section 7.2 to receive notices for Dewey's, and must be served within  
9 forty-five (45) days of the date the Covered Products at issue were purchased or otherwise  
10 acquired by CEH, provided, however, that: (i) CEH may have up to an additional 45 days to  
11 provide Dewey's with the test data required by Section 3.2.2.2 below if it has not yet obtained  
12 such test data from its laboratory; and (ii) CEH may serve a Notice of Violation to a supplier of a  
13 Covered Product so long as (a) the identity of the supplier cannot be discerned from the labeling of  
14 the Covered Product, and (b) the Notice of Violation to the supplier is served within 45 days of the  
15 date the supplier is identified by CEH.

16 3.2.2.2 The Notice of Violation shall, at a minimum, set forth: (a) the date  
17 the alleged violation was observed; (b) the location at which the Covered Products were offered  
18 for sale; (c) a description of the Covered Products giving rise to the alleged violation; and (d) all  
19 test data obtained by CEH regarding the Covered Products and supporting documentation  
20 sufficient for validation of the test results, including any laboratory reports, quality assurance  
21 reports and quality control reports associated with testing of the Covered Products. The  
22 supporting documentation shall include at least two of the following: a photograph of the Covered  
23 Product, its Universal Product Code ("UPC"), lot number, or purchase receipt.

24 3.2.3 Notice of Election of Response. No more than forty-five (45) days after  
25 effectuation of service of a Notice of Violation, Dewey's shall provide a written notice to CEH  
26 stating whether it elects to contest the allegations contained in the Notice of Violation ("Notice of  
27 Election"). Failure to provide a Notice of Election within forty-five (45) days of effectuation of  
28 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.

1                   3.2.3.1 If a Notice of Violation is contested, the Notice of Election shall  
2 include all then-available documentary evidence regarding the alleged violation, including all  
3 available test data. If Dewey's or CEH later acquires additional test or other data regarding the  
4 alleged violation, it shall notify the other party and promptly provide all such data or information  
5 to the party. Any test data used to contest a Notice of Violation shall meet the criteria of Section  
6 2.3.

7                   3.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and Dewey's  
8 shall meet and confer to attempt to resolve their dispute. Within forty-five (45) days of serving a  
9 Notice of Election contesting a Notice of Violation, and if no enforcement action or application  
10 has been filed by CEH pursuant to Section 3.1, Dewey's may withdraw the original Notice of  
11 Election contesting the violation and serve a new Notice of Election to not contest the violation,  
12 provided, however, that, in this circumstance, Dewey's shall pay \$2,500 in addition to any  
13 payment required under this Consent Judgment. At any time, CEH may withdraw a Notice of  
14 Violation, in which case for purposes of this Section 3.2 the result shall be as if CEH never issued  
15 any such Notice of Violation. If no informal resolution of a Notice of Violation results within  
16 forty-five (45) days of a Notice of Election to contest, CEH may file an enforcement motion or  
17 application pursuant to Section 3.1. In any such proceeding, the successful Party may seek  
18 whatever fines, costs, penalties, attorneys' fees or other remedies are provided by law. –

19                   3.2.5 Non-Contested Matters. If Dewey's elects to not contest the allegations in a  
20 Notice of Violation, Dewey's shall undertake corrective action and make payments, if any, as set  
21 forth below.

22                   3.2.5.1 If the test data provided by CEH in support of the Notice of  
23 Violation shows that Lead content in a Covered Product is above the Reformulation Level but less  
24 than sixty (60) ppb, then Dewey's shall take the following corrective action and make the  
25 following payments, if any:

26                   (a) Dewey's shall include in its Notice of Election a detailed  
27 description with supporting documentation of the corrective action that it has undertaken or  
28 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,

1 provide reasonable assurance that Dewey's has stopped selling or offering for sale in California all  
2 Covered Products from the same lot as that of the Covered Products identified in CEH's Notice of  
3 Violation. Dewey's shall make available to CEH for inspection and/or copying records and  
4 correspondence regarding the corrective action. If there is a dispute over the corrective action,  
5 Dewey's and CEH shall meet and confer pursuant to Section 3.2.4 before seeking any remedy in  
6 court. In no case shall CEH issue more than one Notice of Violation per manufacturing lot of a  
7 type of Covered Product.

8 (b) If the Notice of Violation is the first Notice of Violation  
9 received by Dewey's under Section 3.2.5.1 that was not successfully contested or withdrawn, no  
10 payment shall be required by Dewey's. If the Notice of Violation is the second, third or fourth  
11 Notice of Violation received by Dewey's under Section 3.2.5.1 that was not successfully contested  
12 or withdrawn, Dewey's shall pay \$5,000 for each Notice of Violation. If Dewey's has received  
13 more than four (4) Notices of Violation under Section 3.2.5.1 that were not successfully contested  
14 or withdrawn, Dewey's shall pay \$10,000 for each subsequent Notice of Violation. If Dewey's  
15 produces with its Notice of Election test data that: (i) was conducted prior to the date CEH  
16 purchased the Covered Product that is the subject of the Notice of Violation; (ii) was conducted on  
17 the same Covered Product from the same production lot as the Covered Product that is the subject  
18 of the Notice of Violation; and (iii) demonstrates Lead levels below the Reformulation Level as  
19 evaluated under Section 2.3, then any payment under this Section shall be reduced by fifty percent  
20 (50%).

21 3.2.5.2 If the test data provided by CEH in support of the Notice of  
22 Violation reports a Lead content in a Covered Product of more than sixty (60) ppb, then Dewey's  
23 shall take the following corrective action and make the following payments:

24 (a) Dewey's shall include in its Notice of Election a detailed  
25 description with supporting documentation of the corrective action that it has undertaken or  
26 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,  
27 provide reasonable assurance that all Covered Products having the same lot number as that of the  
28 Covered Product identified in CEH's Notice of Violation (the "Noticed Covered Products") will



1 not be thereafter sold or offered for sale to California consumers, that the Noticed Covered  
2 Products are removed from the California market and that the Setting Defendant has sent  
3 instructions to any of its customers that offer the Noticed Covered Products for sale to cease  
4 offering the Noticed Covered Products for sale to California consumers and to return all such  
5 Noticed Covered Products to Dewey's. Dewey's shall keep and make available to CEH for  
6 inspection and copying records and correspondence regarding the market withdrawal of the  
7 Noticed Covered Products. If there is a dispute over the corrective action, Dewey's and CEH shall  
8 meet and confer before seeking any remedy in court. In no case shall CEH issue more than one  
9 NOV per manufacturing lot of a type of Covered Product.

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

20 3.2.6 Payments. Any payments under Section 3.2 shall be made by check  
21 payable to the "Lexington Law Group" and shall be paid within thirty (30) days of service of a  
22 Notice of Election triggering a payment and which shall be used as reimbursement for costs for  
23 investigating, preparing, sending and prosecuting Notices of Violation, and to reimburse  
24 attorneys' fees and costs incurred in connection with these activities.

#### 25 **4. PAYMENTS**

26 4.1 **Payments by Dewey's.** Within five (5) days of the entry of this Consent  
27 Judgment, Dewey's shall pay the total sum of \$39,000 as a settlement payment, as further set forth  
28 in this Section 4.

1           4.2     **Allocation of Payments.** The total settlement amount for Dewey's shall be paid in  
2 four (4) separate checks and delivered as set forth below. Any failure by Dewey's to comply with  
3 the payment terms herein shall be subject to a stipulated late fee to be paid by Dewey's in the  
4 amount of \$100 for each day the full payment is not received after the due date set forth in Section  
5 4.1. The late fees required under this Section shall be recoverable, together with reasonable  
6 attorneys' fees, in an enforcement proceeding brought pursuant to Section 3 of this Consent  
7 Judgment. The funds paid by Dewey's shall be allocated as set forth below between the following  
8 categories and made payable as follows:

9                     4.2.1     \$5,100 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).  
10 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §  
11 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health  
12 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment  
13 for \$3,825 shall be made payable to OEHHA and associated with taxpayer identification number  
14 68 0284486. This payment shall be delivered as follows:

15           For United States Postal Service Delivery:

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

21           For Non-United States Postal Service Delivery:

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

27           The CEH portion of the civil penalty payment for \$1,275 shall be made payable to the  
28 Center for Environmental Health and associated with taxpayer identification number 94-3251981.  
This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,  
CA 94117.

                   4.2.2     \$7,700 as a payment in lieu of civil penalty to CEH pursuant to Health &  
Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH shall use

1 such funds to continue its work educating and protecting people from exposures to toxic  
2 chemicals, including heavy metals. In addition, as part of its Community Environmental Action  
3 and Justice Fund, CEH will use four percent (4%) of such funds to award grants to grassroots  
4 environmental justice groups working to educate and protect people from exposures to toxic  
5 chemicals. The method of selection of such groups can be found at the CEH web site at  
6 www.ceh.org/justicefund. The payment pursuant to this Section shall be made payable to the  
7 Center For Environmental Health and associated with taxpayer identification number 94-3251981.

8 4.2.3 \$26,200 as a reimbursement of a portion of CEH's reasonable attorneys'  
9 fees and costs. The attorneys' fees and cost reimbursement check shall be made payable to the  
10 Lexington Law Group and associated with taxpayer identification number 94-3317175. This  
11 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
12 94117.

## 13 **5. MODIFICATION AND DISPUTE RESOLUTION**

14 5.1 **Modification.** This Consent Judgment may be modified from time to time by  
15 express written agreement of the Parties, with the approval of the Court, or by an order of this  
16 Court upon motion and in accordance with law.

17 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
18 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
19 modify the Consent Judgment.

## 20 **6. CLAIMS COVERED AND RELEASE**

21 6.1 This Consent Judgment is a full, final and binding resolution between CEH on  
22 behalf of itself and the public interest and Dewey's and Dewey's' parents, subsidiaries, affiliated  
23 entities that are under common ownership, directors, officers, employees, agents, shareholders,  
24 successors, assigns, and attorneys ("Defendant Releasees"), and all entities to which Dewey's  
25 directly or indirectly distributes or sells Covered Products, including but not limited to  
26 distributors, wholesalers, customers, retailers, franchisees, licensors and licensees ("Downstream  
27 Defendant Releasees"), of any violation of Proposition 65 based on failure to warn about alleged  
28

1 exposure to Lead contained in Covered Products that were sold by Dewey's prior to the Effective  
2 Date.

3 6.2 CEH, for itself, its agents, successors and assigns, releases, waives, and forever  
4 discharges any and all claims against Dewey's, Defendant Releasees, and Downstream Defendant  
5 Releasees arising from any violation of Proposition 65 or any other statutory or common law  
6 claims that have been or could have been asserted by CEH individually or in the public interest  
7 regarding the failure to warn about exposure to Lead arising in connection with Covered Products  
8 sold by Dewey's prior to the Effective Date.

9 6.3 Compliance with the terms of this Consent Judgment by Dewey's shall constitute  
10 compliance with Proposition 65 by Dewey's, their Defendant Releasees and their Downstream  
11 Defendant Releasees with respect to any alleged failure to warn about Lead in Covered Products  
12 sold by Dewey's after the Effective Date.

13 **7. PROVISION OF NOTICE**

14 7.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
15 notice shall be sent by first class and electronic mail to:

16 Eric S. Somers  
17 Lexington Law Group  
18 503 Divisadero Street  
19 San Francisco, CA 94117  
20 esomers@lexlawgroup.com

21 7.2 When Dewey's are entitled to receive any notice under this Consent Judgment, the  
22 notice shall be sent by first class and electronic mail to:

23 Stephen R. Berlin  
24 Kilpatrick Townsend Stockton, LLP.  
25 1001 West Fourth Street  
26 Winston-Salem, NC 27101-2400  
27 sberlin@kilpatricktownsend.com  
28 Alexander M Bullock  
Kilpatrick Townsend & Stockton LLP  
607 14th Street, NW, Suite 900  
Washington, DC 20005  
abullock@kilpatricktownsend.com

1           7.3     Any Party may modify the person and address to whom the notice is to be sent by  
2 sending the other Party notice by first class and electronic mail.

3     **8.     COURT APPROVAL**

4           8.1     This Consent Judgment shall become effective as a contract upon the date signed  
5 by CEH and Dewey's, whichever is later, provided however, that CEH shall also prepare and file a  
6 Motion for Approval of this Consent Judgment and Dewey's shall support approval of such  
7 Motion.

8           8.2     If this Consent Judgment is not entered by the Court, it shall be of no force or effect  
9 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

10    **9.     GOVERNING LAW AND CONSTRUCTION**

11           9.1     The terms of this Consent Judgment shall be governed by the laws of the State of  
12 California.

13    **10.    ATTORNEYS' FEES**

14           10.1    A Party who unsuccessfully brings or contests an action arising out of this Consent  
15 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs  
16 unless the unsuccessful Party has acted with substantial justification. For purposes of this Consent  
17 Judgment, the term substantial justification shall carry the same meaning as used in the Civil  
18 Discovery Act of 1986, Code of Civil Procedure §§2016.010, et seq.

19           10.2    Notwithstanding Section 10.1, a Party who prevails in a contested enforcement  
20 action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of  
21 Civil Procedure §1021.5 against a Party that acted with substantial justification. The Party  
22 seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and this  
23 provision shall not be construed as altering any procedural or substantive requirements for  
24 obtaining such an award.

25           10.3    Nothing in this Section 10 shall preclude a party from seeking an award of  
26 sanctions pursuant to law.

27  
28

1     **11.    ENTIRE AGREEMENT**

2           11.1   This Consent Judgment contains the sole and entire agreement and understanding  
3 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
4 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
5 and therein. There are no warranties, representations, or other agreements between the Parties  
6 except as expressly set forth herein. No representations, oral or otherwise, express or implied,  
7 other than those specifically referred to in this Consent Judgment have been made by any Party  
8 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,  
9 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically  
10 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the  
11 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,  
12 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
13 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
14 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
15 whether or not similar, nor shall such waiver constitute a continuing waiver.

16     **12.    RETENTION OF JURISDICTION**

17           12.1   This Court shall retain jurisdiction of this matter to implement or modify the  
18 Consent Judgment.

19     **13.    AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

20           13.1   Each signatory to this Consent Judgment certifies that he or she is fully authorized  
21 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
22 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

23     **14.    NO EFFECT ON OTHER SETTLEMENTS**

24           14.1   Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
25 against an entity that is not Dewey's on terms that are different than those contained in this  
26 Consent Judgment.

27  
28

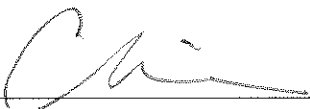
1 **15. EXECUTION IN COUNTERPARTS**

2 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
3 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
4 constitute one document.

5  
6 **IT IS SO STIPULATED:**

7 Dated: 26 May, 2016

**CENTER FOR ENVIRONMENTAL HEALTH**

8  
9  
10   
Signature

11 CYNELIZ PIZANO  
12 Printed Name

13 ASSOCIATE DIRECTOR  
14 Title

15  
16 Dated: \_\_\_\_\_, 2016

**DEWEY'S BAKERY, INC.**

17  
18 \_\_\_\_\_  
Signature

19  
20 \_\_\_\_\_  
Printed Name

21  
22 \_\_\_\_\_  
Title

23  
24 **IT IS SO ORDERED:**

25  
26 Dated: \_\_\_\_\_, 2016

27 \_\_\_\_\_  
Judge of the Superior Court of the State of California

28

1 **15. EXECUTION IN COUNTERPARTS**

2 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
3 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
4 constitute one document.

5  
6 **IT IS SO STIPULATED:**

7 Dated: \_\_\_\_\_, 2016

**CENTER FOR ENVIRONMENTAL HEALTH**

9

10

\_\_\_\_\_  
Signature

11

12

\_\_\_\_\_  
Printed Name

13

14

\_\_\_\_\_  
Title

15

16

Dated: 6/21, 2016

**DEWEY'S BAKERY, INC.**

17

18

Scott Livengood  
Signature

19

20

SCOTT LIVENGOOD  
Printed Name

21

22

OWNER, CEO  
Title

23

24

**IT IS SO ORDERED:**

25

26

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
Judge of the Superior Court of the State of California

27

28



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

**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.