SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH, Plaintiff, v. ENJOY LIFE NATURAL BRANDS, LLC, *et al.*, Defendants.	Case No. RG 17- 872866 **[PROPOSED] CONSENT JUDGMENT AS TO ENJOY LIFE NATURAL BRANDS, LLC AND MONDELĒZ GLOBAL LLC**

1. DEFINITIONS

1.1 The "Complaint" means the operative First Amended Complaint in the above-captioned matter.

1.2 "Covered Products" means ginger snap cookies and gingerbread cookies. The only Covered Products currently sold by Settling Defendants are Nabisco Ginger Snaps ("Nabisco Covered Products") and Enjoy Life Gingerbread Spice Cookies.

1.3 "Interim Nabisco Compliance Date" means: for Nabisco Ginger Snaps only, one year after the Effective Date.

1.4 "Final Compliance Date" means: (a) for Nabisco Ginger Snaps: September 1, 2022; and (b) for all other Covered Products: December 1, 2020.

1.5 "Effective Date" means the date on which notice of entry of this Consent Judgment by the Court is served upon Settling Defendants

2. INTRODUCTION

2.1 The Parties to this Consent Judgment are the Center for Environmental Health, a California non-profit corporation ("CEH"), on the one hand, and Enjoy Life Natural Brands, LLC and Mondelēz Global LLC (collectively, "Settling Defendants"), on the other hand. CEH and Settling Defendants (the "Parties") enter into this Consent Judgment to settle certain claims asserted by CEH against Settling Defendants as set forth in the Complaint.

2.2 On or about February 8 and June 2, 2017, CEH provided a 60-day Notice of Violation of Proposition 65 to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000, and to Settling Defendants, alleging that Settling Defendants violated Proposition 65 by exposing persons in California to acrylamide contained in ginger snap cookies without first providing a clear and reasonable Proposition 65 warning (the "Notices"). Upon entry of this Consent Judgment, the Complaint is deemed amended to assert claims under Proposition 65 for alleged exposures to acrylamide as to all Covered Products.

2.3 Each Settling Defendant is a corporation or other business entity that manufactures, distributes, sells, or offers for sale Covered Products that are sold in the State of California or has done so at times relevant to the Complaint.

2.4 Settling Defendants have committed and will continue to commit substantial resources to reduce the acrylamide levels in the Covered Products, including but not limited to resources spent researching, developing, and testing acrylamide reduction efforts, process changes, and retaining independent contractors to assist in Settling Defendants' endeavors.

2.5 On August 24, 2017, CEH filed the original complaint in the above-captioned matter, naming Settling Defendants as original defendants. On October 18, 2017, CEH filed the

Complaint.[1]

2.6 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over Settling Defendants as to the acts alleged in the Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent Judgment as a full and final resolution of all claims which were or could have been raised in the Complaint based on the facts alleged therein and in the Notices with respect to Covered Products manufactured, distributed, and/or sold by Settling Defendants.

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

3. INJUNCTIVE RELIEF

3.1 Reformulation of Covered Products. Beginning on the applicable Final Compliance Date, Settling Defendants shall not manufacture or purchase Covered Products that will thereafter be sold or offered for sale in California that exceed the following acrylamide concentration limits (the "Reformulation Levels"), such concentration to be determined by use of a test performed by an accredited laboratory using either GC/MS (Gas Chromatograph/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), or any other testing method agreed upon by the Parties:

3.1.1 The average acrylamide concentration shall not exceed 281 parts per billion

[1] The Complaint named Mondelēz Global LLC's parent company Mondelēz International, Inc. as a defendant. Upon entry of this Consent Judgment, the Complaint is deemed amended to name Mondelēz Global LLC, the operating company that manufactures and distributes Covered Products.

("ppb") by weight (the "Average Level"). The Average Level is determined by randomly selecting and testing at least one (1) sample each from at least three (3) and up to ten (10) different lots of a particular Covered Product (or the maximum number of lots available for testing if fewer than three) during a testing period of at least 365 days. The mean and standard deviation shall be calculated using the sampling data. Any data points that are more than three standard deviations outside the mean shall be discarded, and the mean and standard deviation recalculated using the remaining data points. The mean determined in accordance with this procedure shall be deemed the "Average Level."

3.1.2 The acrylamide concentration of any individual unit of Covered Products shall not exceed 300 ppb by weight (the "Unit Level"), based on a representative composite sample taken from the individual unit being tested.

3.2 Interim Reformulation of Nabisco Covered Products. Beginning on the Interim Nabisco Compliance Date, Settling Defendants shall not manufacture or purchase Nabisco Covered Products that will thereafter be sold or offered for sale in California that exceed the following acrylamide concentration limits (the "Interim Nabisco Reformulation Levels"), such concentration to be determined by use of a test performed by an accredited laboratory using either GC/MS (Gas Chromatograph/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), or any other testing method agreed upon by the Parties:

3.2.1 The average acrylamide concentration shall not exceed 350 parts per billion ("ppb") by weight (the "Interim Nabisco Average Level"). The Interim Nabisco Average Level is determined by randomly selecting and testing at least one (1) sample each from at least three (3) and up to ten (10) different lots of Nabisco Covered Products (or the maximum number of lots available for testing if fewer than three) during a testing period of at least 365 days. The mean and standard deviation shall be calculated using the sampling data. Any data points that are more than three standard deviations outside the mean shall be discarded, and the mean and standard deviation recalculated using the remaining data points. The mean determined in accordance with this procedure shall be deemed the "Interim Nabisco Average Level."

3.2.2 The acrylamide concentration of any individual unit of Nabisco Covered

Products shall not exceed 490 ppb by weight (the "Interim Nabisco Unit Level"), based on a representative composite sample taken from the individual unit being tested.

3.3 Other Interim Measures. Settling Defendants shall use commercially reasonable and good faith efforts to achieve compliance with the Reformulation Levels for as many Covered Products as possible earlier than the applicable Compliance Date. These efforts shall include, at a minimum, efforts to adjust cooking processes, ingredients, and/or formulas.

3.4 Reporting. Until Settling Defendants achieve compliance with the Reformulation Levels as to all of the Covered Products, Settling Defendants shall provide a written progress report to CEH once every twelve (12) months after the Effective Date. Such reports shall include, at a minimum, an identification and discussion of the interim measures Settling Defendants have implemented or considered to reduce the acrylamide levels in the Covered Products, the results of any bench or production scale testing of acrylamide reduction technologies, and an identification of any Covered Products for which Settling Defendants have achieved substantial reductions in acrylamide levels and/or compliance with the Reformulation Levels. Such reports shall be provided to CEH through its counsel at the address specified in Section 8.1 below.

3.5 Extension of Final Compliance Date. If, despite using commercially reasonable and good faith efforts, Settling Defendants are unable to satisfy the applicable Reformulation Levels as to the Nabisco Covered Products prior to the Final Compliance Date, Settling Defendants shall provide written notice to CEH at least thirty (30) days before the Final Compliance Date of their need to extend the Final Compliance Date by an additional six (6) months. Such written notice shall include a detailed description of Settling Defendants' efforts to satisfy the Reformulation Levels and the anticipated date of compliance. In addition, if Settling Defendants avail themselves of the extension allowed under this Section 3.5, Settling Defendants shall make the additional payments specified in Section 5.2 below for each extension. Settling Defendants may avail themselves of this provision no more than three (3) times (such that the Final Compliance Date may be extended by no more than eighteen (18) months).

3.6 Except as provided in Section 6.3, if Settling Defendants have not reached the Reformulation Levels by the applicable Final Compliance Date (or any extensions pursuant to

Section 3.5) for any Covered Products, then for all such Covered Products they shall provide a clear and reasonable warning that complies with Sections 3.6.1, 3.6.2, or 3.6.3. In addition, if Settling Defendants avail themselves of the warning option allowed under this Section 3.6, Settling Defendants shall make the additional payments specified in Section 5.3 below.

3.6.1 Warnings provided on the packaging of the Covered Product shall state as follows:

> **WARNING**: Consuming this product can expose you to chemicals including acrylamide, which is known to the State of California to cause cancer [and birth defects or other reproductive harm]. [Acrylamide is a chemical that can form in some foods during high-temperature cooking processes, such as frying, roasting, and baking.] For more information go to www.P65Warnings.ca.gov/food.

The word "WARNING" shall be displayed in all capital letters and bold print. The bracketed terms may be provided at Settling Defendant's option. The warning statement shall be prominently displayed on the Covered Product with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual prior to sale. If the warning statement is displayed on the Covered Product's label, it must be set off from other surrounding information and enclosed in a text box.

3.6.2 Warnings provided on a placard or sign, and for internet, catalog, or any other sale, shall state:

> **WARNING**: Consuming this product can expose you to chemicals including acrylamide, which is known to the State of California to cause cancer [and birth defects or other reproductive harm]. [Acrylamide is a chemical that can form in some foods during high-temperature cooking processes, such as frying, roasting, and baking.] For more information go to www.P65Warnings.ca.gov/food.

The word "WARNING" shall be displayed in all capital letters and bold print. The bracketed terms may be provided at Settling Defendant's option. This statement shall be prominently displayed with

such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual prior to sale. If the statement is displayed on a placard or sign where the Covered Product is offered for sale, the warning placard or sign must enable an ordinary individual to easily determine which specific Covered Products the warning applies to, and to differentiate between that Covered Product and other products to which the warning statement does not apply. For internet, catalog, or any other sale where the consumer is not physically present, the warning statement shall be displayed in such a manner that it is likely to be read and understood by an ordinary individual prior to the authorization of or actual payment. To comply with this Section 3.5.2, Settling Defendants may rely on the procedure for notifying retailers set out in Title 27, California Code of Regulations, section 25600.2, in effect as of the Effective Date.

3.6.3 The warning requirements set forth herein are imposed pursuant to the terms of this Consent Judgment, and are recognized by the Parties as not being the exclusive manner of providing a warning for the Covered Products. Warnings may be provided as specified in the Proposition 65 regulations for food in effect as of the Effective Date (Title 27, California Code of Regulations, section 25601, *et seq.*) or as such regulations may be amended in the future.

4. ENFORCEMENT

4.1 General Enforcement Provisions. CEH may, by motion or application for an order to show cause before this Court, enforce the terms and conditions contained in this Consent Judgment. Any action to enforce alleged violations of Section 3.1 by Settling Defendants shall be brought exclusively pursuant to this Section 4, and be subject to the meet and confer requirement of Section 4.2.4 if applicable.

4.2 Enforcement of Reformulation Commitment.

4.2.1 Notice of Violation. In the event that CEH purchases a Covered Product in California that was sold or distributed by a Settling Defendant and that has a best-by or sell-by (or equivalent) date or other code that reflects that the Covered Product was manufactured on or after the Final Compliance Date, and for which CEH has laboratory test results showing that the Covered Product has an acrylamide level exceeding the Unit Level, CEH may issue a Notice of Violation

pursuant to this Section.

4.2.2 Service of Notice of Violation and Supporting Documentation.

4.2.2.1 The Notice of Violation shall be sent to the person(s) identified in Section 8.2 to receive notices for Settling Defendants, and must be served within sixty (60) days of the later of the date the Covered Product at issue was purchased or otherwise acquired by CEH or the date that CEH can reasonably determine that the Covered Product at issue was manufactured, distributed, or sold by a Settling Defendant, provided, however, that CEH may have up to an additional sixty (60) days to send the Notice of Violation if, notwithstanding CEH's good faith efforts, the test data required by Section 4.2.2.2 below cannot be obtained by CEH from its laboratory before expiration of the initial sixty (60) day period.

4.2.2.2 The Notice of Violation shall, at a minimum, set forth: (a) the date the Covered Product was purchased; (b) the location at which the Covered Product was purchased; (c) a description of the Covered Product giving rise to the alleged violation, including the name and address of the retail entity from which the sample was obtained and pictures of the product packaging from all sides, which identifies the product lot; and (d) all test data obtained by CEH regarding the Covered Product and supporting documentation sufficient for validation of the test results, including any laboratory reports, quality assurance reports, and quality control reports associated with testing of the Covered Product.

4.2.3 Notice of Election of Response. No more than sixty (60) days after effectuation of service of a Notice of Violation, Settling Defendants shall provide written notice to CEH whether they elect to contest the allegations contained in a Notice of Violation ("Notice of Election"). Failure to provide a Notice of Election within sixty (60) days of effectuation of service of a Notice of Violation shall be deemed an election to contest the Notice of Violation. Upon notice to CEH, Settling Defendants may have up to an additional sixty (60) days to elect if, notwithstanding Settling Defendants' good faith efforts, Settling Defendants are unable to verify the test data provided by CEH before expiration of the initial thirty (30) day period.

4.2.3.1 If a Notice of Violation is contested, the Notice of Election shall include all documents upon which Settling Defendants are relying to contest the alleged violation,

including all available non-privileged test data. If a Settling Defendant or CEH later acquires additional non-privileged testing or other data regarding the alleged violation during the meet and confer period described in Section 4.2.4, it shall notify the other Party and promptly provide all such non-privileged data or information to the Party unless either the Notice of Violation or Notice of Election has been withdrawn.

4.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and Settling Defendants shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of serving a Notice of Election contesting a Notice of Violation, Settling Defendants may withdraw the original Notice of Election contesting the violation and serve a new Notice of Election to not contest the violation, provided, however, that, in this circumstance, Settling Defendants shall pay $2,500 in addition to any other payment required under this Consent Judgment. At any time, CEH may withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the result shall be as if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of Violation results within thirty (30) days of a Notice of Election to contest, CEH may file an enforcement motion or application pursuant to Section 4.1. The Parties may extend this thirty (30) day time period by stipulation. In any such proceeding, CEH may seek whatever fines, costs, penalties, attorneys' fees, or other remedies are provided by law for failure to comply with the Consent Judgment.

4.2.5 Non-Contested Notices. If Settling Defendants elect to not contest the allegations in a Notice of Violation, they shall undertake corrective action(s) and make payments, if any, as set forth below.

4.2.5.1 Settling Defendants shall include in their Notice of Election a detailed description with supporting documentation of the corrective action(s) that they have undertaken or propose to undertake to address the alleged violation. Any such correction shall, at a minimum, provide reasonable assurance that, with respect to all Covered Products having the same lot number as that of the Covered Product identified in CEH's Notice of Violation (the "Noticed Covered Products") Settling Defendants have sent instructions to any retailers or customers that offer the Noticed Covered Products for sale to cease offering the Noticed Covered Products for sale

to California consumers and to return all such Noticed Covered Products to Settling Defendants if Settling Defendants have reason to believe the Noticed Covered Products are still offered for sale to California consumers. Settling Defendants shall make available to CEH upon reasonable notice (which shall not exceed more than one request per year) for inspection and copying records of any correspondence to retailers or customers regarding the foregoing. Settling Defendants will be excused from the obligation to instruct retailers or customers to cease California sales if Settling Defendants produce test results or other evidence showing that the Noticed Covered Products comply with the Average Level specified in Section 3.1.1. However, to avail themselves of this provision, Settling Defendants must provide CEH with all non-privileged acrylamide test data in their possession, custody or control pertaining to the type of Covered Product at issue in the Notice of Violation that was performed within the year prior to Settling Defendants producing test results to CEH under this Section 4.2.5.1. If there is a dispute over the corrective action, Settling Defendants and CEH shall meet and confer before seeking any remedy in court.

4.2.5.2 If the Notice of Violation is the first, second, third, or fourth Notice of Violation received by Settling Defendants under Section 4.2.1 that was not successfully contested or withdrawn, then Settling Defendants shall pay $15,000 for each Notice of Violation. If Settling Defendants have received more than four (4) Notices of Violation under Section 4.2.1 that were not successfully contested or withdrawn, then Settling Defendants shall pay $25,000 for each Notice of Violation. If Settling Defendants produce with their Notice of Election test data for the specific SKU or comparative like items that reasonably demonstrates predicted acrylamide levels below the Unit Level, then any payment under this Section shall be reduced by 100 percent (100%) for the first Notice of Violation, by seventy-five percent (75%) for the second Notice of Violation, and by fifty percent (50%) for any subsequent Notice of Violation. If Settling Defendants are excused from corrective action under Section 4.2.5.1 based on their showing of the Average Level, then Settling Defendants shall pay $2,500 for that Notice of Violation. In no case shall Settling Defendants be obligated to pay more than $100,000 for all Notices of Violation not successfully contested or withdrawn in any calendar year irrespective of the total number of Notices of Violation issued.

4.2.6 In no case shall CEH issue more than one Notice of Violation per manufacturing lot of a type of Covered Product. CEH shall be limited to issuing no more than two total Notices of Violation to Settling Defendants in the first year after each applicable Final Compliance Date with respect to the type of Covered Product subject to that Final Compliance Date.

4.2.7 Payments. Any payments under Section 4.2 shall be made by check payable to the "Lexington Law Group" and shall be paid within thirty (30) days of service of a Notice of Election triggering a payment and shall be used as reimbursement for costs for investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse attorneys' fees and costs incurred in connection with these activities, and shall be the extent of all monetary remedies available to CEH under this Consent Judgment for a non-contested Notice of Violation.

4.3 Repeat Violations. If Settling Defendants have received five (5) or more Notices of Violation concerning the same type of Covered Product that were not successfully contested or withdrawn in any two (2) year period then, at CEH's option, CEH may seek whatever fines, costs, penalties, attorneys' fees, or other remedies that are provided by law for failure to comply with the Consent Judgment. Prior to seeking such relief, CEH shall meet and confer with Settling Defendants for at least thirty (30) days to determine if Settling Defendants and CEH can agree on measures that Settling Defendants can undertake to prevent future alleged violations.

5. PAYMENTS

5.1 Payments by Settling Defendants. Settling Defendants shall pay the total sum of $177,500 as a settlement payment as further set forth in Section 5.1 within ten (10) calendar days of the Effective Date.

5.1.1 Allocation of Payments. The total settlement amount for Settling Defendants shall be paid in separate checks in the amounts specified below and delivered as set forth below. Any failure by Settling Defendants to comply with the payment terms herein shall be subject to a stipulated late fee to be paid by Settling Defendants in the amount of $100 for each day the full payment is not received after the applicable payment due date. The late fees required under this Section shall be recoverable, together with reasonable attorneys' fees, in an enforcement proceeding

brought pursuant to Section 4 of this Consent Judgment. The funds paid by Settling Defendants shall be allocated as set forth below between the following categories and made payable as follows:

5.1.1.1 $24,060 as a civil penalty pursuant to Health & Safety Code § 25249.7(b). This civil penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the initial civil penalty payment for $18,045 shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

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

The CEH portion of the initial civil penalty payment for $6,015 shall be made payable to the 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.

5.1.1.2 $18,040 as an Additional Settlement Payment ("ASP") to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH intends to restrict use of the ASPs received from the Consent Judgment before the Court to the following purposes: the funds will be placed in CEH's Toxics in Food Fund and used to support CEH programs and activities that seek to educate the public about acrylamide and other toxic chemicals in food, to work with the food industry and agriculture interests to reduce exposure to acrylamide and other toxic chemicals in food, and to thereby reduce the public health impacts and risks of exposure to acrylamide and other toxic chemicals in food sold in California. CEH shall

obtain and maintain adequate records to document that ASPs are spent on these activities and CEH agrees to provide such documentation to the Attorney General within thirty (30) days of any request from the Attorney General. The payment pursuant to this Section shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. The payment pursuant to this Section shall be made payable to the Center for Environmental Health, associated with taxpayer identification number 94-3251981 and delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.1.1.3 $135,400 as a reimbursement of CEH's reasonable attorneys' fees and costs (including but not limited to expert and investigative costs). The attorneys' fees and cost reimbursement shall be made in two separate checks as follows: (a) $120,900 payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b) $14,500 payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. These payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2 Additional Contingent Payments for Extending Final Compliance Dates.

5.2.1 If Settling Defendants avail themselves of the initial extension option provided for Nabisco Covered Products by Section 3.5, within thirty (30) days of first electing to extend the Final Compliance Date, Settling Defendants shall make an additional payment of $50,000 as a civil penalty. If Settling Defendants avail themselves of the second extension option provided for by Section 3.5, within thirty (30) days of electing to extend the Final Compliance Date a second time, Settling Defendants shall make an additional payment of $100,000 as a civil penalty for this second extension. If Settling Defendants avail themselves of the third extension option provided for by Section 3.5, within thirty (30) days of electing to extend the Final Compliance Date a third time, Settling Defendants shall make an additional payment of $150,000 as a civil penalty for this third extension. Any additional civil penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to OEHHA). Any additional civil penalty payments under this section shall be apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to OEHHA). The CEH portion of any such additional civil

penalty payment shall be made payable to the 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. The OEHHA portion of the civil penalty shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered to the address set forth in Section 5.1.1(a) or any updated address for OEHHA.

5.3 Additional Contingent Payments for Warning.

5.3.1 If Settling Defendants avail themselves of the warning option provided for by Section 3.6, on or before the applicable Final Compliance Date for each type of Covered Product, Settling Defendants shall make an additional payment of $125,000 as a civil penalty (such that Settling Defendants would ultimately need to make an additional payment of $250,000 if it elected to warn as to all Covered Products). Any additional payment required under this section shall be reduced on a pro rata basis by the percentage of Settling Defendants' sales of Covered Products within that category (either Nabisco Covered Products or all other Covered Products) for which warnings are not required because they meet the applicable Reformulation Levels. At the same time they make any necessary payment under this Section, Settling Defendants shall provide CEH with sales data on a confidential basis to support any such reduction of the payment. Any such reduction shall be calculated based on Settling Defendants' most recent annual national sales of the Covered Products at issue; provided, however, for any Covered Products that Settling Defendant discontinued after the Effective Date in order to comply with the requirements of this Consent Judgment, the final year's worth of Settling Defendants' sales prior to the discontinuation for those Covered Products shall be included within the category of Covered Products that satisfy the Reformulation Levels. If CEH disagrees as to the amount of the reduction, the Parties shall meet and confer in good faith. If the Parties cannot informally resolve the dispute within thirty (30) days of initiating their meet and confer efforts, CEH may seek to have the dispute resolved by the Court. Any additional civil penalty payments under this section shall be apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to OEHHA). The CEH portion of any such additional civil penalty payment shall be made payable to the 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. The OEHHA portion of the civil penalty shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered to the address set forth in Section 5.1.1(a) or any updated address for OEHHA.

5.4 Joint and Several But Singular Obligation. Any payment required to be made by Settling Defendants under Section 4 or Section 5 of this Consent Judgment shall be a joint and several but singular obligation of Enjoy Life Natural Brands, LLC and Mondelēz Global LLC, such that any payment need only be paid once, whether from Enjoy Life Natural Brands, LLC, Mondelēz Global LLC, or by both companies contributing a share of each payment.

6. MODIFICATION AND DISPUTE RESOLUTION

6.1 Modification. This Consent Judgment may be modified from time to time by express written agreement of the Parties, with the approval of the Court, or by an order of this Court upon motion and in accordance with law. Any modification of this Consent Judgment shall not impact Settling Defendants' initial payment obligations under Section 5.1.

6.2 Notice; Meet and Confer. Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

6.3 Feasibility. If, despite using commercially reasonable and good faith efforts, Settling Defendants have not achieved compliance with the Reformulation Levels as to any Covered Products by the applicable Final Compliance Date (including any extensions pursuant to Section 3.5), then Settling Defendants may request that the Parties meet and confer as to an appropriate modification of this Consent Judgment. Such modification could include: (a) an extension of the Final Compliance Date (with a negotiated increase in the settlement payments to be made by Settling Defendants); or (b) any other modification that the Parties agree is appropriate and in the public interest. Grounds for an extension or other modification may include, but are not limited to, that, despite Settling Defendants' good faith efforts to reduce acrylamide, it is not Feasible for one or more Covered Products to meet the Reformulation Levels. "Feasible" means capable of being

accomplished in a successful manner, taking into account economic, commercial, and technological factors. The term "Feasible" includes, but is not limited to, a consideration of the following factors: availability and reliability of a supply of ingredients used in the Covered Products; and cost and commercial considerations in changes to sourcing, harvesting, or storage methods for ingredients used in the Covered Products, and compliance with any prior consent judgment. In considering whether a technical mitigation option is Feasible, consideration shall be given to, among other things, prior demonstration of the viability of any technologies or methods for similar products meeting the Reformulation Levels on a commercial application scale.

6.4 Change in Proposition 65. If Proposition 65 or its implementing regulations (including but not limited to the "safe harbor no significant risk level" for acrylamide set forth at Cal. Code Regs., tit. 27, section 25705, subdivision (c)(2) or any "alternative risk level" adopted by regulation or court decision) are changed from their terms as they exist on the date of entry of this Consent Judgment in a manner that impacts the Reformulation Levels, or if OEHHA takes some other final regulatory action for products similar to the Covered Products in a manner that impacts the Reformulation Levels or determines that warnings for acrylamide are not required for such products, then Settling Defendants may seek to modify this Consent Judgment to modify the Reformulation Levels. The Parties recognize that the Reformulation Levels are based on a compromise of a number of issues, and that a change to the "safe harbor no significant risk level" for acrylamide would not necessarily entitle a Party to a modification of the terms of this Consent Judgment corresponding to a linear relationship with such a change.

6.5 Other Court Decisions. If a final decision of a court determines that warnings for acrylamide exposures or that enforcement of Proposition 65 claims for acrylamide exposures are preempted or otherwise unlawful or unconstitutional with respect to products similar to the Covered Products, then Settling Defendants may move to modify this Consent Judgment to conform to such ruling in order to avoid unfair, inconsistent, or anti-competitive results.

6.6 Federal Agency Action and Preemption. If a court of competent jurisdiction or an agency of the federal government, including, but not limited to, the U.S. Food and Drug Administration, states through any guidance, regulation or legally binding act that federal law has

preemptive effect on any of the requirements of this Consent Judgment, then this Consent Judgment may be modified in accordance with the procedure for noticed motions set forth in Section 6.2 to bring it into compliance with or avoid conflict with federal law. Any such modification shall be limited to those changes that are necessary to bring this Consent Judgment into compliance with or avoid conflict with federal law.

6.7 Before filing any motion to modify the Consent Judgment, Settling Defendants shall provide written notice to CEH to initiate the meet and confer procedure in Section 6.2. If the Parties do not agree on the proposed modification during informal meet and confer efforts, Settling Defendants may file a motion to modify the Consent Judgment within sixty (60) days of the date of the written notice that Settling Defendants provide to CEH under this Section 6.

7. CLAIMS COVERED AND RELEASE

7.1 Provided that Settling Defendants comply in full with their obligations under Section 5 hereof, this Consent Judgment is a full, final and binding resolution between CEH on behalf of itself and the public interest and Settling Defendants and their parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, shareholders, successors, assigns, and attorneys ("Defendant Releasees"), and all entities to which Settling Defendants directly or indirectly distribute or sell Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees ("Downstream Defendant Releasees"), of any violation of Proposition 65 based on failure to warn about alleged exposure to acrylamide contained in Covered Products that were manufactured or purchased by Settling Defendants prior to the Final Compliance Date applicable to that type of Covered Product.

7.2 Provided that Settling Defendants comply in full with their obligations under Section 5 hereof, CEH, for itself, its agents, successors and assigns, releases, waives, and forever discharges any and all claims against Settling Defendants, Defendant Releasees, and Downstream Defendant Releasees arising from any violation of Proposition 65 or any other statutory or common law claims that have been or could have been asserted by CEH individually or in the public interest regarding the failure to warn about exposure to acrylamide arising in connection with Covered Products that were manufactured or purchased by Settling Defendants prior to the Final Compliance Date

applicable to that type of Covered Product.

Provided that Settling Defendants comply in full with their obligations under Section 5 hereof, CEH, in its individual capacity only and not in its representative capacity, also provides a release to Settling Defendants, Defendant Releasees, and Downstream Defendant Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of CEH of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to acrylamide in the Covered Products that were manufactured or purchased by Settling Defendants prior to the Final Compliance Date applicable to that type of Covered Product.

7.3 Provided that Settling Defendants comply in full with their obligations under Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendants shall constitute compliance with Proposition 65 by Settling Defendants, Defendant Releasees and Downstream Defendant Releasees with respect to any alleged failure to warn about acrylamide in Covered Products that were manufactured or purchased by Settling Defendants on and after the Final Compliance Date applicable to that type of Covered Product.

8. PROVISION OF NOTICE

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

Howard Hirsch
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
hhirsch@lexlawgroup.com

8.2 When Settling Defendants are entitled to receive any notice under this Consent Judgment, the notice shall be sent by first class and electronic mail to:

Sarah Esmaili
Arnold & Porter Kaye Scholer LLP
3 Embarcadero Center, Suite 1000
San Francisco, CA 94111
sarah.esmaili@apks.com

and

Mondelēz Global LLC
VP & Chief Counsel
100 DeForest Avenue
East Hanover, NJ 07936
melissa.harrup@mdlz.com

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

9. COURT APPROVAL

9.1 This Consent Judgment shall become effective upon the date signed by CEH and Settling Defendants, whichever is later, provided however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendants shall support entry of this Consent Judgment by the Court.

9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect and shall not be introduced into evidence or otherwise used in any proceeding for any purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

9.3 Within ten (10) days of receiving the initial payments required by Section 5.1, CEH shall dismiss defendants Safeway Inc. and SF Markets, LLC from this action without prejudice, and those defendants shall waive all costs in this action.

10. GOVERNING LAW AND CONSTRUCTION

10.1 The terms of this Consent Judgment shall be governed by the laws of the State of California.

11. ATTORNEYS' FEES

11.1 A Party who unsuccessfully brings or contests an action, motion, or application arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs.

11.2 Nothing in this Section 11 shall preclude a Party from seeking an award of sanctions pursuant to law.

12. ENTIRE AGREEMENT

12.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,

negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

13. RETENTION OF JURISDICTION

13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment. Notwithstanding the provisions of Section 6, nothing in this Consent Judgment limits or affects the Court's authority to modify this Consent Judgment as provided by law.

14. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

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

15. NO EFFECT ON OTHER SETTLEMENTS

15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim against an entity that is not a Settling Defendant on terms that are different than those contained in this Consent Judgment. Settling Defendants may move to modify this Consent Judgment pursuant to Section 6 to substitute higher Reformulation Levels that CEH agrees to in a future consent judgment applicable to products substantially similar to the Covered Products, and CEH agrees not to oppose any such motion except for good cause shown.

16. EXECUTION IN COUNTERPARTS

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

IT IS SO ORDERED, ADJUDGED, AND DECREED

Dated: _____

_____
Judge of the Superior Court

IT IS SO STIPULATED:

Dated: 12/19, 2019

CENTER FOR ENVIRONMENTAL HEALTH

_____
Signature

Michael Green
Printed Name

Chief Executive Officer
Title

Dated: _____, 2019

ENJOY LIFE NATURAL BRANDS, LLC

_____
Signature

_____
Printed Name

_____
Title

16. **EXECUTION IN COUNTERPARTS**

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

IT IS SO ORDERED, ADJUDGED, AND DECREED

Dated: _____

_____
Judge of the Superior Court

IT IS SO STIPULATED:

Dated: _____, 2019

CENTER FOR ENVIRONMENTAL HEALTH

_____
Signature

_____
Printed Name

_____
Title

Dated: Dec 19, 2019

ENJOY LIFE NATURAL BRANDS, LLC

_____
Signature

Sarah Mascarenhas
Printed Name

Interim CEO & CFO
Title

Dated: December 19, 2019

MONDELĒZ GLOBAL LLC

M.V. Harrup
Signature

MELISSA HARRUP
Printed Name

ASSISTANT SECRETARY
Title