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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,) Case No. RG 17- 872872
Plaintiff,)
v.) **[PROPOSED] CONSENT JUDGMENT**
FANTASY COOKIE CORPORATION, *et al.*,) **AS TO BAY VALLEY FOODS, LLC**
Defendants.)
_____)

- 1. DEFINITIONS**
- 1.1 The “Complaint” means the operative complaint in the above-captioned matter.
- 1.2 “Compliance Date” shall mean the date that is six months after the Effective Date.
- 1.3 “Covered Products” means animal crackers and animal cookies manufactured, distributed, or sold by Settling Defendant that have been or will be offered for sale to California consumers.

1 1.4 “Effective Date” means the date on which notice of entry of this Consent
2 Judgment by the Court is served upon Settling Defendant.

3 **2. INTRODUCTION**

4 2.1 The Parties to this Consent Judgment are the Center for Environmental Health, a
5 California non-profit corporation (“CEH”) and Bay Valley Foods, LLC (“Settling Defendant”).
6 CEH and Settling Defendant (the “Parties”) enter into this Consent Judgment to settle certain
7 claims asserted by CEH against Settling Defendant as set forth in the Complaint.

8 2.2 On or about June 2, 2017, CEH provided a 60-day Notice of Violation of
9 Proposition 65 to the California Attorney General, the District Attorneys of every county in
10 California, the City Attorneys of every California city with a population greater than 750,000,
11 and to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing
12 persons in California to acrylamide contained in Covered Products without first providing a clear
13 and reasonable Proposition 65 warning (the “Notice”).

14 2.3 Settling Defendant is a corporation or other business entity that manufactures,
15 distributes, sells, or offers for sale Covered Products that are sold in the State of California or has
16 done so at times relevant to the Complaint. Many of the Covered Products sold by Settling
17 Defendant are labeled as organic under the National Organic Program (“NOP”). Under the NOP,
18 Settling Defendant is limited in the use of certain enzymes that could otherwise be used to further
19 reduce acrylamide levels in the Covered Products that are sold as organic.

20 2.4 On August 24, 2017, CEH filed the Complaint in the above-captioned matter,
21 naming Settling Defendant as an original defendant.

22 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
23 has jurisdiction over the allegations of violations contained in the Complaint and personal
24 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper
25 in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent
26 Judgment as a full and final resolution of all claims which were or could have been raised in the
27 Complaint based on the facts alleged therein and in the Notice with respect to Covered Products
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1 manufactured, distributed, and/or sold by Settling Defendant.

2 2.6 Nothing in this Consent Judgment is or shall be construed as an admission by the
3 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with
4 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
5 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
6 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any
7 other pending or future legal proceedings. This Consent Judgment is the product of negotiation
8 and compromise and is accepted by the Parties solely for purposes of settling, compromising, and
9 resolving issues disputed in this action.

10 **3. INJUNCTIVE RELIEF**

11 3.1 **Reformulation of Covered Products.** Commencing on the Compliance Date,
12 Settling Defendant shall not purchase, or manufacture any Covered Products that will thereafter
13 be sold or offered for sale in California that exceed the following acrylamide concentration limits
14 (the “Reformulation Levels”), such concentration to be determined by use of a test performed by
15 an accredited laboratory using either GC/MS (Gas Chromatograph/Mass Spectrometry), LC-
16 MS/MS (Liquid Chromatograph-Mass Spectrometry), or any other testing method agreed upon
17 by the Parties:

18 3.1.1 For organic Covered Products:

19 3.1.1.1 The acrylamide concentration of any individual unit of Covered
20 Products shall not exceed 200 ppb by weight (the “Organic Unit Level”), based on a
21 representative composite sample taken from the individual unit being tested.

22 3.1.1.2 The average acrylamide concentration shall not exceed 175 parts
23 per billion (“ppb”) by weight (the “Organic Unit Average Level”). The Organic Unit Average
24 Level is determined by randomly selecting and testing at least one sample each from at least five
25 and up to 30 different lots of organic Covered Products (or the maximum number of lots available
26 for testing if fewer than five) during a testing period of at least 60 days. The mean and standard
27 deviation shall be calculated using the sampling data. Any data points that are more than three

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1 standard deviations outside the mean shall be discarded once, and the mean and standard
2 deviation recalculated using the remaining data points. The mean determined in accordance with
3 this procedure shall be deemed the “Organic Unit Average Level.”

4 3.1.2 For all other Covered Products:

5 3.1.2.1 The average acrylamide concentration shall not exceed 75 parts per
6 billion (“ppb”) by weight (the “Average Level”). The Average Level is determined by randomly
7 selecting and testing at least one sample each from at least five and up to 30 different lots of
8 Covered Products (or the maximum number of lots available for testing if fewer than five) during
9 a testing period of at least 60 days. The mean and standard deviation shall be calculated using the
10 sampling data. Any data points that are more than three standard deviations outside the mean
11 shall be discarded once, and the mean and standard deviation recalculated using the remaining
12 data points. The mean determined in accordance with this procedure shall be deemed the
13 “Average Level.”

14 3.1.2.2 The acrylamide concentration of any individual unit of Covered
15 Products shall not exceed 100 ppb by weight (the “Unit Level”), based on a representative
16 composite sample taken from the individual unit being tested.

17 **4. ENFORCEMENT**

18 4.1 **General Enforcement Provisions.** CEH may, by motion or application for an
19 order to show cause before this Court, enforce the terms and conditions contained in this Consent
20 Judgment. Any action to enforce alleged violations of Section 3.1 by Settling Defendant shall be
21 brought exclusively pursuant to this Section 4, and be subject to the meet and confer requirement
22 of Section 4.2.5 if applicable.

23 **4.2 Enforcement of Reformulation Commitment.**

24 4.2.1 Covered Product Identification. Within 30 days after the Compliance
25 Date, Settling Defendant shall notify CEH of a means sufficient to allow CEH to identify
26 Covered Products supplied or offered by Settling Defendant for sale on or after that date, for
27 example, a unique brand name or characteristic system of product numbering or labeling. Upon
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1 written request by CEH, but no more than once in any calendar year, Settling Defendant shall,
2 within 30 days of receiving a request from CEH, update the information provided to CEH
3 pursuant to this Section 4.2.1 by notifying CEH of a means sufficient to allow CEH to identify
4 Covered Products currently supplied or offered for sale by Settling Defendant. If CEH is unable
5 to determine whether a particular product is a Covered Product as to Settling Defendant based on
6 the information provided to CEH pursuant to this Section 4.2.1, Settling Defendant shall
7 cooperate in good faith with CEH in determining whether the product at issue is a Covered
8 Product supplied or offered for sale by Settling Defendant. Information provided to CEH
9 pursuant to this Section 4.2.1, including but not limited to the identities of parties to contracts
10 between Settling Defendant and third parties, may be designated by Settling Defendant as
11 competitively sensitive confidential business information, and if so designated shall not be
12 disclosed to any person without the written permission of Settling Defendant. Any motions or
13 pleadings or any other court filings that may reveal information designated as competitively
14 sensitive confidential business information pursuant to this Section shall be submitted in
15 accordance with California Rules of Court 8.46 and 2.550, et seq. This provision shall sunset
16 seven years after the Effective Date.

17 4.2.2 Notice of Violation. In the event that CEH purchases a Covered Product
18 in California that was sold or offered for sale by Settling Defendant with a best-by or sell-by (or
19 equivalent) date or other code that reflects that the Covered Product was manufactured on or after
20 the Compliance Date, and for which CEH has laboratory test results showing that the Covered
21 Product exceeds the Organic Unit Level or Unit Level, whichever is applicable, CEH may issue a
22 Notice of Violation pursuant to this Section. CEH shall have the burden to prove any alleged
23 violation of the Consent Judgment.

24 4.2.3 Service of Notice of Violation and Supporting Documentation.

25 4.2.3.1 The Notice of Violation shall be sent to the person(s) identified in
26 Section 8.2 to receive notices for Settling Defendant, and must be served within sixty (60) days of
27 the later of the date the Covered Product at issue was purchased or otherwise acquired by CEH or
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1 the date that CEH can reasonably determine that the Covered Product at issue was manufactured,
2 or sold by Settling Defendant, provided, however, that CEH may have up to an additional sixty
3 (60) days to send the Notice of Violation if, notwithstanding CEH’s good faith efforts, the test
4 data required by Section 4.2.3.2 below cannot be obtained by CEH from its laboratory before
5 expiration of the initial sixty (60) day period.

6 4.2.3.2 The Notice of Violation shall, at a minimum, set forth: (a) the date
7 the Covered Product was purchased; (b) the location at which the Covered Product was
8 purchased; (c) a description of the Covered Product giving rise to the alleged violation, including
9 the name and address of the retail entity from which the sample was obtained and pictures of the
10 product packaging from all sides, which identifies the product lot; and (d) all test data obtained
11 by CEH regarding the Covered Product and supporting documentation sufficient for validation of
12 the test results, including any laboratory reports, quality assurance reports, and quality control
13 reports associated with testing of the Covered Product.

14 4.2.4 Notice of Election of Response. No more than sixty (60) days after
15 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to
16 CEH whether it elects to contest the allegations contained in a Notice of Violation (“Notice of
17 Election”). Failure to provide a Notice of Election within sixty (60) days of effectuation of
18 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.
19 Upon notice to CEH, Settling Defendant may have up to an additional sixty (60) days to elect if,
20 notwithstanding Settling Defendant’s good faith efforts, Settling Defendant is unable to verify the
21 test data provided by CEH before expiration of the initial sixty (60) day period.

22 4.2.4.1 If a Notice of Violation is contested, the Notice of Election shall
23 include all documents upon which Settling Defendant is relying to contest the alleged violation,
24 including all available non-privileged test data. If Settling Defendant or CEH later acquires
25 additional non-privileged testing or other data regarding the alleged violation during the meet and
26 confer period described in Section 4.2.5, it shall notify the other Party and promptly provide all
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1 such non-privileged data or information to the Party unless either the Notice of Violation or
2 Notice of Election has been withdrawn.

3 4.2.5 Meet and Confer. If a Notice of Violation is contested, CEH and Settling
4 Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of
5 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw
6 the original Notice of Election contesting the violation and serve a new Notice of Election to not
7 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay
8 \$2,500 in addition to any other payment required under this Consent Judgment. At any time,
9 CEH may withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the
10 result shall be as if CEH never issued any such Notice of Violation. If no informal resolution of a
11 Notice of Violation results within thirty (30) days of a Notice of Election to contest, CEH may
12 file an enforcement motion or application pursuant to Section 4.1. The parties may extend this
13 thirty (30) day time period by stipulation. In any such proceeding, CEH may seek whatever
14 fines, costs, penalties, attorneys' fees, or other remedies are provided by law for failure to comply
15 with the Consent Judgment.

16 4.2.6 Non-Contested Notices. If Settling Defendant elects to not contest the
17 allegations in a Notice of Violation, it shall undertake corrective action(s) and make payments, if
18 any, as set forth below.

19 4.2.6.1 Settling Defendant shall include in its Notice of Election a detailed
20 description with supporting documentation of the corrective action(s) that it has undertaken or
21 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,
22 provide reasonable assurance that, with respect to all Covered Products having the same lot
23 number as that of the Covered Product identified in CEH's Notice of Violation (the "Noticed
24 Covered Products") Settling Defendant has sent instructions to any retailers or customers that
25 offer the Noticed Covered Products for sale to cease offering the Noticed Covered Products for
26 sale to California consumers and to return all such Noticed Covered Products to Settling
27 Defendant, if Settling Defendant has reason to believe the Noticed Covered Products are still
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1 offered for sale to California consumers. Settling Defendant shall make available to CEH upon
2 reasonable notice (which shall not exceed more than one request per year) for inspection and
3 copying records of any correspondence to retailers or customers regarding the foregoing. Settling
4 Defendant will be excused from the obligation to instruct retailers or customers to cease
5 California sales if Settling Defendant produces test results or other evidence showing that the
6 Noticed Covered Products comply with the applicable average level specified in Section 3.1.
7 However, to avail itself of this provision, Settling Defendant must provide CEH with all non-
8 privileged acrylamide test data in its possession, custody or control pertaining to the type of
9 Covered Product at issue in the Notice of Violation that was performed within the year prior to
10 Settling Defendant producing test results to CEH under this Section 4.2.6.1. If there is a dispute
11 over the corrective action, Settling Defendant and CEH shall meet and confer before seeking any
12 remedy in court.

13 4.2.6.2 If the Notice of Violation is the first, second, third, or fourth Notice
14 of Violation received by Settling Defendant under Section 4.2.2 that was not successfully
15 contested or withdrawn, then Settling Defendant shall pay \$15,000 for each Notice of Violation.
16 If Settling Defendant has received more than four (4) Notices of Violation under Section 4.2.2
17 that were not successfully contested or withdrawn, then Settling Defendant shall pay \$25,000 for
18 each Notice of Violation. If Settling Defendant produces with its Notice of Election test data for
19 the specific SKU or comparative like items that reasonably demonstrates predicted acrylamide
20 levels below the Organic Unit Level or Unit Level, as applicable, then any payment under this
21 Section shall be reduced by 100 percent (100%) for the first Notice of Violation, by seventy-five
22 percent (75%) for the second Notice of Violation, and by fifty percent (50%) for any subsequent
23 Notice of Violation. If Settling Defendant is excused from corrective action under Section
24 4.2.6.1 based on its showing of the applicable average level in Section 3.1, then Settling
25 Defendant shall pay \$2,500 for that Notice of Violation. In no case shall Settling Defendant be
26 obligated to pay more than \$100,000 for all Notices of Violation not successfully contested or
27 withdrawn in any calendar year irrespective of the total number of Notices of Violation issued.

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1 4.2.7 In no case shall CEH issue more than one Notice of Violation per
2 manufacturing lot of a type of Covered Product. CEH shall be limited to issuing no more than
3 two total Notice of Violation to Settling Defendant in the first year after the Compliance Date.

4 4.2.8 Payments. Any payments under Section 4.2 shall be made by check
5 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a
6 Notice of Election triggering a payment and shall be used as reimbursement for costs for
7 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse
8 attorneys’ fees and costs incurred in connection with these activities, and shall be the extent of all
9 monetary remedies available to CEH under this Consent Judgment for a non-contested Notice of
10 Violation

11 4.3 **Repeat Violations.** If Settling Defendant has received five (5) or more Notices of
12 Violation concerning the same type of Covered Product that were not successfully contested or
13 withdrawn in any two (2) year period then, at CEH’s option, CEH may seek whatever fines,
14 costs, penalties, attorneys’ fees, or other remedies that are provided by law for failure to comply
15 with the Consent Judgment. Prior to seeking such relief, CEH shall meet and confer with Settling
16 Defendant for at least thirty (30) days to determine if Settling Defendant and CEH can agree on
17 measures that Settling Defendant can undertake to prevent future alleged violations.

18 **5. PAYMENTS**

19 5.1 **Payments by Settling Defendant.** Within ten (10) calendar days of the Effective
20 Date, Settling Defendant shall pay the total sum of \$160,000 as a settlement payment as further
21 set forth in this Section.

22 5.2 **Allocation of Payments.** The total settlement amount shall be paid in four (4)
23 separate checks in the amounts specified below and delivered as set forth below. Any failure by
24 Settling Defendant to comply with the payment terms herein shall be subject to a stipulated late
25 fee to be paid by Settling Defendant to CEH in the amount of \$100 for each day the full payment
26 is not received after the payment due date set forth in Section 5.1. The late fees required under
27 this Section shall be recoverable, together with reasonable attorneys’ fees, in an enforcement

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

4 5.2.1 \$28,000 as a civil penalty pursuant to Health & Safety Code
5 § 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health &
6 Safety Code § 25249.12 (25% to CEH and 75% to the State of California’s Office of
7 Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of
8 the civil penalty payment for \$21,000 shall be made payable to OEHHA and associated with
9 taxpayer identification number 68-0284486. 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

16 For Non-United States Postal Service Delivery:

17 Attn: Mike Gyurics
18 Fiscal Operations Branch Chief
19 Office of Environmental Health Hazard Assessment
20 1001 I Street, MS #19B
21 Sacramento, CA 95814

22 The CEH portion of the civil penalty payment for \$7,000 shall be made
23 payable to the Center for Environmental Health and associated with taxpayer identification
24 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
25 Street, San Francisco, CA 94117.

26 5.2.2 \$20,990 as an Additional Settlement Payment (“ASP”) to CEH pursuant to
27 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH
28 intends to restrict use of the ASPs received from this Consent Judgment 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

1 chemicals in food, to work with the food industry and agriculture interests to reduce exposure to
2 acrylamide and other toxic chemicals in food, and to thereby reduce the public health impacts and
3 risks of exposure to acrylamide and other toxic chemicals in food sold in California. CEH shall
4 obtain and maintain adequate records to document that ASPs are spent on these activities and
5 CEH agrees to provide such documentation to the Attorney General within thirty (30) days of any
6 request from the Attorney General. The payment pursuant to this Section shall be made payable
7 to the Center for Environmental Health and associated with taxpayer identification number 94-
8 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
9 Francisco, CA 94117.

10 5.2.3 \$111,010 as a reimbursement of a portion of CEH’s reasonable attorneys’
11 fees and costs. The attorneys’ fees and cost reimbursement shall be made payable to the
12 Lexington Law Group and associated with taxpayer identification number 94-3317175. This
13 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
14 94117.

15 **6. MODIFICATION AND DISPUTE RESOLUTION**

16 6.1 **Modification.** This Consent Judgment may be modified from time to time by
17 express written agreement of the Parties, with the approval of the Court, or by an order of this
18 Court upon motion and in accordance with law.

19 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
20 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to
21 modify the Consent Judgment.

22 6.3 **Change in Proposition 65.** If Proposition 65 or its implementing regulations
23 (including but not limited to the “safe harbor no significant risk level” for acrylamide set forth at
24 Cal. Code Regs., tit. 27, section 25705, subdivision (c)(2) or any “alternative risk level” adopted
25 by regulation or court decision) are changed from their terms as they exist on the date of entry of
26 this Consent Judgment in a manner that impacts the Reformulation Levels, or if OEHHA takes
27 some other final regulatory action for products similar to the Covered Products in a manner that
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1 impacts the Reformulation Levels or determines that warnings for acrylamide are not required for
2 such products, then Settling Defendant may seek to modify this Consent Judgment to modify the
3 Reformulation Levels. The Parties recognize that the Reformulation Levels are based on a
4 compromise of a number of issues, and that a change to the “safe harbor no significant risk level”
5 for acrylamide would not necessarily entitle a Party to a modification of the terms of this Consent
6 Judgment corresponding to a linear relationship with such a change.

7 **6.4 Other Court Decisions.** If a final decision of a court determines that warnings for
8 acrylamide exposures or that enforcement of Proposition 65 claims for acrylamide exposures are
9 preempted or otherwise unlawful or unconstitutional with respect to products similar to the
10 Covered Products, then Settling Defendant may move to modify this Consent Judgment to
11 conform to such ruling in order to avoid unfair, inconsistent, or anti-competitive results.

12 **6.5 Federal Agency Action and Preemption.** If a court of competent jurisdiction or
13 an agency of the federal government, including, but not limited to, the U.S. Food and Drug
14 Administration, states through any guidance, regulation or legally binding act that federal law has
15 preemptive effect on any of the requirements of this Consent Judgment, then this Consent
16 Judgment may be modified in accordance with the procedure for noticed motions set forth in
17 Section 6.1 to bring it into compliance with or avoid conflict with federal law. Any such
18 modification shall be limited to those changes that are necessary to bring this Consent Judgment
19 into compliance with or avoid conflict with federal law.

20 **6.6** Before filing any motion to modify the Consent Judgment, Settling Defendant
21 shall provide written notice to CEH to initiate the meet and confer procedure in Section 6.2. If
22 the Parties do not agree on the proposed modification during informal meet and confer efforts,
23 Settling Defendant may file a motion to modify the Consent Judgment within sixty (60) days of
24 the date of the written notice that Settling Defendant provides to CEH under this Section 6.

25 **7. CLAIMS COVERED AND RELEASE**

26 **7.1** Provided that Settling Defendant complies in full with its obligations under
27 Section 5 hereof, this Consent Judgment is a full, final and binding resolution between CEH on
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1 behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries,
2 affiliated entities that are under common ownership, directors, officers, employees, agents,
3 shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to
4 which Settling Defendant directly or indirectly distribute or sell Covered Products, including but
5 not limited to distributors, wholesalers, customers, retailers (including but not limited to CVS
6 Pharmacy, Inc. and Costco Wholesale Corp.), franchisees, licensors, and licensees (“Downstream
7 Defendant Releasees”), of any violation of Proposition 65 based on failure to warn about alleged
8 exposure to acrylamide contained in Covered Products that were manufactured or purchased by
9 Settling Defendant prior to the Compliance Date.

10 7.2 Provided that Settling Defendant complies in full with its obligations under
11 Section 5 hereof, CEH, for itself, its agents, successors and assigns, releases, waives, and forever
12 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream
13 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
14 common law claims that have been or could have been asserted by CEH individually or in the
15 public interest regarding the failure to warn about exposure to acrylamide arising in connection
16 with Covered Products that were manufactured or purchased by Settling Defendant prior to the
17 Compliance Date.

18 7.3 Provided that Settling Defendant complies in full with its obligations under
19 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant
20 shall constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees and
21 Downstream Defendant Releasees with respect to any alleged failure to warn about acrylamide in
22 Covered Products purchased or manufactured by Settling Defendant on and after the Compliance
23 Date.

24 **8. PROVISION OF NOTICE**

25 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
26 notice shall be sent by first class and electronic mail to:
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Howard Hirsch
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
hhirsch@lexlawgroup.com

8.2 When Settling Defendant is 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@arnoldporter.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 Defendant, whichever is later, provided however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant 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 fifteen (15) calendar days of the Effective Date, CEH shall file a request for dismissal without prejudice of CVS Pharmacy, Inc. and Costco Wholesale Corp. in this action, provided that CVS Pharmacy, Inc. and Costco Wholesale Corp. agree to waive all costs against CEH 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

1 arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable
2 attorneys' fees and costs.

3 11.2 Nothing in this Section 11 shall preclude a party from seeking an award of
4 sanctions pursuant to law.

5 **12. ENTIRE AGREEMENT**

6 12.1 This Consent Judgment contains the sole and entire agreement and understanding
7 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
8 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
9 and therein. There are no warranties, representations, or other agreements between the Parties
10 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
11 other than those specifically referred to in this Consent Judgment have been made by any Party
12 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
13 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
14 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
15 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
16 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
17 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
18 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
19 whether or not similar, nor shall such waiver constitute a continuing waiver.

20 **13. RETENTION OF JURISDICTION**

21 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
22 Consent Judgment. Notwithstanding the provisions of Section 6, nothing in this Consent
23 Judgment limits or affects the Court's authority to modify this Consent Judgment as provided by
24 law.

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

2 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
4 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

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

12 **16. EXECUTION IN COUNTERPARTS**

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


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17 **IT IS SO ORDERED, ADJUDGED,**
18 **AND DECREED**

19 Dated: _____
20 _____
21 Judge of the Superior Court

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IT IS SO STIPULATED:

Dated: <u>7/19</u> , 2019	CENTER FOR ENVIRONMENTAL HEALTH  _____ Signature <u>Michael Green</u> _____ Printed Name <u>CEO</u> _____ Title
Dated: _____, 2019	BAY VALLEY FOODS, LLC _____ Signature _____ Printed Name _____ Title

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IT IS SO STIPULATED:

Dated: _____, 2019	CENTER FOR ENVIRONMENTAL HEALTH _____ Signature _____ Printed Name _____ Title
Dated: <u>7/25</u> , 2019	BAY VALLEY FOODS, LLC  _____ Signature <u>MARK FERNANDEZ</u> Printed Name <u>PRESIDENT, BAKED GOODS</u> Title