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20 Attorneys for Defendants  
21 PERVINE FOODS, LLC, individually and doing  
22 business as CHEF ROBERT IRVINE'S FIT  
23 CRUNCH; BAKERY BARN, INC., individually and  
24 doing business as CHEF ROBERT IRVINE'S FIT  
25 CRUNCH

26 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
27 **COUNTY OF ALAMEDA**

28 ENVIRONMENTAL RESEARCH CENTER,  
INC., a non-profit California corporation,

Plaintiff,

v.

PERVINE FOODS, LLC, individually and  
doing business as CHEF ROBERT IRVINE'S  
FIT CRUNCH, a Pennsylvania limited liability  
company; BAKERY BARN, INC.,  
individually and doing business as CHEF  
ROBERT IRVINE'S FIT CRUNCH, a  
Pennsylvania corporation; and DOES 1 – 25,

Defendants.

CASE NO. RG18920840

**AMENDED STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: September 17, 2018  
Trial Date: None set

1     **1. INTRODUCTION**

2           **1.1**     On September 17, 2018, Plaintiff Environmental Research Center, Inc. (“ERC”),  
3 a non-profit corporation, as a private enforcer and in the public interest, initiated this action by  
4 filing a Complaint for Permanent Injunction, Civil Penalties and Other Relief pursuant to the  
5 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),  
6 against PERVINE FOODS, LLC, individually and doing business as CHEF ROBERT  
7 IRVINE’S FIT CRUNCH; BAKERY BARN, INC., individually and doing business as CHEF  
8 ROBERT IRVINE’S FIT CRUNCH (collectively “PERVINE/BAKERY”) and DOES 1-25.  
9 Subsequently, on December 12, 2018, ERC filed an Amended Complaint (the operative  
10 Complaint referred to hereinafter as the “Complaint”).

11           **1.2**     In this action, ERC alleges that fourteen specific products manufactured,  
12 distributed, or sold by PERVINE/BAKERY contain lead, a chemical listed under Proposition  
13 65 as a carcinogen and reproductive toxin, and expose consumers to lead at a level requiring a  
14 Proposition 65 warning. These products (referred to hereinafter individually as a “Covered  
15 Product” or collectively as “Covered Products”) are: (1) Chef Robert Irvine's Fit Crunch Whey  
16 Protein Baked Bar Cookies And Cream, (2) Chef Robert Irvine's Fit Crunch Whey Protein  
17 Baked Bar Peanut Butter, (3) Chef Robert Irvine's Fit Crunch Whey Protein Baked Bar  
18 Chocolate Chip Cookie Dough, (4) Chef Robert Irvine's Fit Crunch Whey Protein Baked Bar  
19 Caramel Peanut, (5) Chef Robert Irvine's Fit Crunch Whey Protein Brownie Cookie Dough, (6)  
20 Chef Robert Irvine's Fit Crunch Whey Protein Powder Chocolate Deluxe, (7) Chef Robert  
21 Irvine's Fit Crunch Whey Protein Powder Peanut Butter, (8) Chef Robert Irvine's Fit Crunch  
22 Whey Protein Brownie Chocolate 50g, (9) Chef Robert Irvine's Fit Crunch Whey Protein  
23 Baked Bar Birthday Cake 88g, (10) Chef Robert Irvine's Fit Crunch Whey Protein Baked Bar  
24 Chocolate Chip Cookie Dough 46g, (11) Chef Robert Irvine's Fit Crunch Whey Protein Baked  
25 Bar Cinnamon Twist 46g, (12) Chef Robert Irvine's Fit Crunch Whey Protein Baked Bar  
26 Birthday Cake 46g, (13) Chef Robert Irvine's Fit Crunch Whey Protein Baked Bar Caramel  
27 Peanut 46g, and (14) Chef Robert Irvine's Fit Crunch Whey Protein Baked Bar Chocolate  
28 Peanut Butter 46g.

1           **1.3**     ERC and PERVINE/BAKERY are hereinafter referred to individually as a  
2 “Party” or collectively as the “Parties.”

3           **1.4**     ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
4 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
5 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
6 and encouraging corporate responsibility.

7           **1.5**     For purposes of this Amended Stipulated Consent Judgment (hereinafter referred  
8 to as “Consent Judgment”), the Parties agree that each defendant is a business entity each of which  
9 has employed ten or more persons at all times relevant to this action, and qualifies as a “person in  
10 the course of doing business” within the meaning of Proposition 65. PERVINE/BAKERY  
11 manufactures, distributes, and/or sells the Covered Products.

12           **1.6**     The Complaint is based on allegations contained in ERC’s Notices of  
13 Violation dated June 8, 2018 and September 14, 2018 that were served on the California  
14 Attorney General, other public enforcers, and PERVINE/BAKERY (“Notices”). True and  
15 correct copies of the 60-Day Notices dated June 8, 2018 and September 14, 2018 are attached  
16 hereto as **Exhibits A and B** respectively and are incorporated herein by reference. More than 60  
17 days have passed since the Notices were served on the Attorney General, public enforcers, and  
18 PERVINE/BAKERY and no designated governmental entity has filed a Complaint against  
19 PERVINE/BAKERY with regard to the Covered Products or the alleged violations.

20           **1.7**     ERC’s Notices and Complaint allege that use of the Covered Products exposes  
21 persons in California to lead without first providing clear and reasonable warnings in violation  
22 of California Health and Safety Code section 25249.6. PERVINE/BAKERY denies ERC’s  
23 allegations, and asserts that independent testing confirms that PERVINE/BAKERY’s Covered  
24 Products comply with Proposition 65.

25           **1.8**     The Effective Date of this Consent Judgment is the date on which it is entered as  
26 a Judgment by this Court.

27 **2.     NO ADMISSION**

28           **2.1**     The Parties have entered into this Consent Judgment in order to settle,

1 compromise, and resolve all claims that were raised in the Complaint, or that could have been  
2 raised in the Complaint, arising out of the facts or conduct alleged therein with respect to  
3 violations of Proposition 65 as it pertains to the Covered Products, and thus avoid prolonged and  
4 costly litigation. Nothing in this Consent Judgment nor compliance with this Consent Judgment  
5 shall constitute or be construed as an admission by any of the Parties or by any of their respective  
6 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
7 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,  
8 issue of law, or violation of law, including, but not limited to, any facts or conclusions of law  
9 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law  
10 or equitable requirements relating to Lead in the Covered Products.

11 **2.2** Except as expressly set forth herein, nothing in this Consent Judgment shall  
12 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any  
13 current or future legal proceedings unrelated to this case. This Consent Judgment is the product  
14 of negotiation and compromise and is accepted by PERVINE/BAKERY for purposes of settling,  
15 compromising, and resolving issues disputed in this action. However, this section shall not  
16 diminish or otherwise affect the obligations, responsibilities and duties of PERVINE/BAKERY  
17 under this Consent Judgment.

### 18 **3. JURISDICTION AND VENUE**

19 For purposes of this Consent Judgment and any further court action that may become  
20 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
21 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
22 over PERVINE/BAKERY as to the acts alleged in the Complaint, that venue is proper in Alameda  
23 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final  
24 resolution of all claims up through and including the Effective Date which were or could have  
25 been asserted in this action based on the facts alleged in the Notices and Complaint.

### 26 **4. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

27 **4.1** Beginning on the Effective Date, PERVINE/BAKERY shall be permanently  
28 enjoined from manufacturing for sale in the State of California, "Distributing into the State of

1 California,” or directly selling in the State of California, any Covered Products which expose a  
2 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day, as  
3 determined by the Testing and Quality Control Methodology under Section 4.4. If any of the  
4 Covered Products expose consumers in California to a “Daily Lead Exposure Level” of more  
5 than 0.5 micrograms per day, as determined by the Testing and Quality Control Methodology  
6 under Section 4.4, PERVINE/BAKERY must comply with the warning requirements under  
7 Section 4.2.

8           **4.1.1** As used in this Consent Judgment, the term “Distributing into the State  
9 of California” shall mean to directly ship a Covered Product into California for sale in  
10 California or to sell a Covered Product to a distributor that PERVINE/BAKERY knows or has  
11 a good faith reason to know will sell the Covered Product in California.

12           **4.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure Level”  
13 shall be measured in micrograms, and shall be calculated using the following formula:  
14 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
15 product (using the largest serving size appearing on the product label), multiplied by servings of  
16 the product per day (using the largest number of recommended daily servings appearing on the  
17 label), which equals micrograms of lead exposure per day, excluding, pursuant to Section 3.1.3,  
18 amounts of allowances of lead in the ingredients listed in **Table 1** below. If the label contains no  
19 recommended daily servings, then the number of recommended daily servings shall be one.

20           **4.1.3** In calculating the Daily Lead Exposure Level for a Covered Product,  
21 PERVINE/BAKERY shall be allowed to deduct the amount of lead which is deemed “naturally  
22 occurring” in any ingredient listed in **Table 1** that is contained in that Covered Product under the  
23 following conditions: For each year that PERVINE/BAKERY claims entitlement to a “naturally  
24 occurring” allowance, PERVINE/BAKERY shall provide ERC with the following information:  
25 (a) PERVINE/BAKERY must produce to ERC a list of each ingredient in the Covered Product  
26 for which a “naturally occurring” allowance is claimed; (b) PERVINE/BAKERY must provide  
27 ERC with documentation of laboratory testing that complies with Sections 4.4.3 and 4.4.4 and  
28 that shows the amount of lead, if any, contained in any ingredient listed in **Table 1** that is

1 contained in the Covered Product and for which PERVINE/BAKERY intends to deduct  
 2 “naturally occurring” lead; (c) If the laboratory testing reveals the presence of lead in any  
 3 ingredient listed in **Table 1** that is contained in the Covered Product, PERVINE/BAKERY shall  
 4 be entitled to deduct up to the full amount of the allowance for that ingredient, as listed in **Table**  
 5 **1**, but not to exceed the total amount of lead actually contained in that ingredient in the Covered  
 6 Product; and (d) If the Covered Product does not contain an ingredient listed in **Table 1**,  
 7 PERVINE/BAKERY shall not be entitled to a deduction for “naturally occurring” lead in the  
 8 Covered Product for that ingredient. The information required by Sections 3.1.4 (a) and (b) shall  
 9 be provided to ERC within thirty (30) days of the Effective Date or anniversary thereof for any  
 10 year that PERVINE/BAKERY shall claim entitlement to the “naturally occurring” allowance.

11 **TABLE 1**

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Calcium (Elemental)	Up to 0.8 micrograms/gram
Ferrous Fumarate	Up to 0.4 micrograms/gram
Zinc Oxide	Up to 8.0 micrograms/gram
Magnesium Oxide	Up to 0.4 micrograms/gram
Magnesium Carbonate	Up to 0.332 micrograms/gram
Magnesium Hydroxide	Up to 0.4 micrograms/gram
Zinc Gluconate	Up to 0.8 micrograms/gram
Potassium Chloride	Up to 1.1 micrograms/gram
Cocoa-powder	Up to 1.0 micrograms/gram
Chocolate Liquor	Up to 1.0 micrograms/gram
Cocoa Butter	Up to 0.1 micrograms/gram

25 **4.2 Clear and Reasonable Warnings**

26 If PERVINE/BAKERY is required to provide a warning pursuant to Section 4.1, the  
 27 following warning must be utilized (“Warning”):

28 **WARNING:** Consuming this product can expose you to chemicals including lead which is

1 [are] known to the State of California to cause [cancer and] birth defects or other  
2 reproductive harm. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

3 PERVINE/BAKERY shall use the phrase “cancer and” in the Warning if PERVINE/BAKERY has  
4 reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as  
5 determined pursuant to the quality control methodology set forth in Section 4.4 or if  
6 PERVINE/BAKERY has reason to believe that another Proposition 65 chemical is present which  
7 may require a cancer warning.

8 The Warning shall be securely affixed to or printed upon the container or label of each  
9 Covered Product. If the Warning is provided on the label, it must be set off from other  
10 surrounding information and enclosed in a box. In addition, for any Covered Product sold over  
11 the internet, the Warning shall appear on the checkout page when a California delivery address is  
12 indicated for any purchase of any Covered Product. An asterisk or other identifying method  
13 must be utilized to identify which products on the checkout page are subject to the Warning. In  
14 no event shall any internet or website Warning be contained in or made through a link.

15 The Warning shall be at least the same size as the largest of any other health or safety  
16 warnings also appearing on the website or on the label or container of PERVINE/BAKERY’s  
17 product packaging and the word “**WARNING**” shall be in all capital letters and in bold print. No  
18 statements intended to or likely to have the effect of diminishing the impact of the Warning on the  
19 average lay person shall accompany the Warning. Further, no statements may accompany the  
20 Warning that state or imply that the source of the listed chemical has an impact on or results in a  
21 less harmful effect of the listed chemical.

22 PERVINE/BAKERY must display the above Warning with such conspicuousness, as  
23 compared with other words, statements or designs on the label or container, or on its website, if  
24 applicable, to render the Warning likely to be read and understood by an ordinary individual under  
25 customary conditions of purchase or use of the product.

#### 26 **4.3 Conforming Covered Products**

27 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure  
28 Level” is no greater than 0.5 micrograms of lead per day as determined by the quality control

1 methodology described in Section 4.4.

2 **4.4 Testing and Quality Control Methodology**

3 **4.4.1** Beginning within one year of the Effective Date, PERVINE/BAKERY  
4 shall arrange for lead testing of the Covered Products at least once a year for a minimum of five  
5 consecutive years by arranging for testing of five randomly selected samples of each of the  
6 Covered Products, in the form intended for sale to the end-user, which PERVINE/BAKERY  
7 intends to sell or is manufacturing for sale in California, directly selling to a consumer in  
8 California or “Distributing into the State of California.” If tests conducted pursuant to this  
9 Section demonstrate that no Warning is required for a Covered Product during each of five  
10 consecutive years, then the testing requirements of this Section will no longer be required as to  
11 that Covered Product. However, if during or after the five-year testing period,  
12 PERVINE/BAKERY changes ingredient suppliers for any of the Covered Products and/or  
13 reformulates any of the Covered Products, PERVINE/BAKERY shall test that Covered Product  
14 within 60 days thereof to confirm compliance with the injunctive terms set forth herein, in  
15 addition to the annual testing required by this Agreement.

16 **4.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest  
17 lead detection result of the five (5) randomly selected samples of the Covered Products will be  
18 controlling. In the event that test results from only one (1) of the five (5) randomly selected  
19 samples results in a “Daily Lead Exposure Level” of more than 0.5 micrograms per day, as  
20 determined by the Testing and Quality Control Methodology under Section 4.4 (the “result in  
21 question”), and the “Daily Lead Exposure Level” from the result in question is less than 1.0  
22 micrograms per day, then PERVINE/BAKERY may conduct one additional test from the same  
23 lot that produced the result in question, and the highest lead detection result of the five (5)  
24 randomly selected samples of the Covered Products that remain after excluding the result in  
25 question will be controlling.

26 **4.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
27 laboratory method that complies with the performance and quality control factors appropriate  
28 for the method used, including limit of detection, qualification, accuracy, and precision that



1 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)  
2 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

3 **4.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
4 independent third party laboratory certified by the California Environmental Laboratory  
5 Accreditation Program or an independent third-party laboratory that is registered with the  
6 United States Food & Drug Administration.

7 **4.4.5** Nothing in this Consent Judgment shall limit PERVINE/BAKERY’s  
8 ability to conduct, or require that others conduct, additional testing of the Covered Products,  
9 including the raw materials used in their manufacture.

10 **4.4.6** Within thirty (30) days of ERC’s written request, PERVINE/BAKERY  
11 shall deliver lab reports obtained pursuant to Section 4.4 to ERC. PERVINE/BAKERY shall  
12 retain all test results and documentation for a period of five years from the date of each test.

## 13 **5. SETTLEMENT PAYMENT**

14 **5.1** In full satisfaction of all potential civil penalties, additional settlement payments,  
15 attorney’s fees, and costs, PERVINE/BAKERY shall make a total payment of \$400,000.00  
16 (“Total Settlement Amount”) to ERC within 10 days of the Effective Date (“Due Date”).  
17 PERVINE/BAKERY shall make this payment by wire transfer to ERC’s account, for which  
18 ERC will give PERVINE/BAKERY the necessary account information. The Total Settlement  
19 Amount shall be apportioned as follows:

20 **5.2** \$141,000.00 shall be considered a civil penalty pursuant to California Health  
21 and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$105,750.00) of the civil  
22 penalty to the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in  
23 the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health  
24 and Safety Code section 25249.12(c). ERC will retain the remaining 25% (\$35,250.00) of the  
25 civil penalty.

26 **5.3** \$20,115.97 shall be distributed to ERC as reimbursement to ERC for reasonable  
27 costs incurred in bringing this action.

28 **5.4** \$105,114.32 shall be distributed to ERC as an Additional Settlement Payment

1 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and  
2 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly  
3 caused by PERVINE/BAKERY in this matter. These activities are detailed below and support  
4 ERC’s overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary  
5 supplement products in California. ERC’s activities have had, and will continue to have, a direct  
6 and primary effect within the State of California because California consumers will be benefitted  
7 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by  
8 providing clear and reasonable warnings to California consumers prior to ingestion of the  
9 products.

10           Based on a review of past years’ actual budgets, ERC is providing the following list of  
11 activities ERC engages in to protect California consumers through Proposition 65 citizen  
12 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those  
13 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary  
14 supplement products that may contain lead and are sold to California consumers. This work  
15 includes continued monitoring and enforcement of past consent judgments and settlements to  
16 ensure companies are in compliance with their obligations thereunder, with a specific focus on  
17 those judgments and settlements concerning lead. This work also includes investigation of new  
18 companies that ERC does not obtain any recovery through settlement or judgment; (2)  
19 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC’s Voluntary  
20 Compliance Program by acquiring products from companies, developing and maintaining a case  
21 file, testing products from these companies, providing the test results and supporting  
22 documentation to the companies, and offering guidance in warning or implementing a self-  
23 testing program for lead in dietary supplement products; and (3) “GOT LEAD” PROGRAM (up  
24 to 5%): maintaining ERC’s “Got Lead?” Program which reduces the numbers of contaminated  
25 products that reach California consumers by providing access to free testing for lead in dietary  
26 supplement products (Products submitted to the program are screened for ingredients which are  
27 suspected to be contaminated, and then may be purchased by ERC, catalogued, sent to a  
28 qualified laboratory for testing, and the results shared with the consumer that submitted the

1 product).

2 ERC shall be fully accountable in that it will maintain adequate records to document and  
3 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are  
4 being spent only for the proper, designated purposes described in this Consent Judgment. ERC  
5 shall provide the Attorney General, within thirty days of any request, copies of documentation  
6 demonstrating how such funds have been spent.

7 **5.5** \$115,882.88 shall be distributed to Aqua Terra Aeris Law Group as  
8 reimbursement of ERC's attorney's fees, while \$17,886.83 shall be distributed to ERC for its  
9 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and  
10 costs.

11 **5.6** In the event that PERVINE/BAKERY fails to remit the Total Settlement  
12 Amount owed under Section 4 of this Consent Judgment on or before the Due Date,  
13 PERVINE/BAKERY shall be deemed to be in material breach of its obligations under this  
14 Consent Judgment. ERC shall provide written notice of the delinquency to  
15 PERVINE/BAKERY via electronic mail. If PERVINE/BAKERY fails to deliver the Total  
16 Settlement Amount within five (5) days from the written notice, the Total Settlement Amount  
17 shall accrue interest at the statutory judgment interest rate provided in the California Code of  
18 Civil Procedure section 685.010. Additionally, PERVINE/BAKERY agrees to pay ERC's  
19 reasonable attorney's fees and costs for any efforts to collect the payment due under this  
20 Consent Judgment.

21 **6. MODIFICATION OF CONSENT JUDGMENT**

22 **6.1** This Consent Judgment may be modified, except for the Settlement Payment  
23 provisions provided for in Section 5, only (i) by written stipulation of the Parties and upon entry  
24 by the Court of a modified consent judgment or (ii) by motion of either Party pursuant to Section  
25 6.3 or 6.4 and upon entry by the Court of a modified consent judgment.

26 **6.2** If PERVINE/BAKERY seeks to modify this Consent Judgment under Section  
27 6.1, then PERVINE/BAKERY must provide written notice to ERC of its intent ("Notice of  
28 Intent"). If ERC seeks to meet and confer regarding the proposed modification in the Notice of

1 Intent, then ERC must provide written notice to PERVINE/BAKERY within thirty (30) days of  
2 receiving the Notice of Intent. If ERC notifies PERVINE/BAKERY in a timely manner of  
3 ERC's intent to meet and confer, then the Parties shall meet and confer in good faith as  
4 required in this Section. The Parties shall meet in person or via telephone within thirty (30)  
5 days of ERC's notification of its intent to meet and confer. Within thirty (30) days of such  
6 meeting, if ERC disputes the proposed modification, ERC shall provide to  
7 PERVINE/BAKERY a written basis for its position. The Parties shall continue to meet and  
8 confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should  
9 it become necessary, the Parties may agree in writing to different deadlines for the meet-and-  
10 confer period.

11 **6.3** In the event that PERVINE/BAKERY initiates or otherwise requests a  
12 modification under Section 6.1, and the meet and confer process leads to a joint motion or  
13 application for a modification of the Consent Judgment, PERVINE/BAKERY shall reimburse  
14 ERC its costs and reasonable attorney's fees for the time spent in the meet-and-confer process  
15 and filing and arguing the motion or application. However, ERC shall not be entitled to  
16 reimbursement for attorney's fees if ERC does not expend more than five (5) hours of attorney  
17 time on the joint motion or application for modification.

18 **6.4** Where the meet-and-confer process does not lead to a joint motion or  
19 application in support of a modification of the Consent Judgment, then either Party may seek  
20 judicial relief on its own.

21 **7. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
22 **JUDGMENT**

23 **7.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate  
24 this Consent Judgment.

25 **7.2** If ERC alleges that any Covered Product fails to qualify as a Conforming  
26 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
27 inform PERVINE/BAKERY in a reasonably prompt manner of its test results, including  
28 information sufficient to permit PERVINE/BAKERY to identify the Covered Products at issue.

1 PERVINE/BAKERY shall, within thirty (30) days following such notice, provide ERC with  
2 testing information, from an independent third-party laboratory meeting the requirements of  
3 Sections 4.4.3 and 4.4.4, demonstrating PERVINE/BAKERY's compliance with the Consent  
4 Judgment. The Parties shall first attempt to resolve the matter prior to ERC taking any further  
5 legal action.

6 **8. APPLICATION OF CONSENT JUDGMENT**

7 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
8 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
9 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,  
10 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no  
11 application to any Covered Product which is distributed or sold exclusively outside the State of  
12 California and which is not used by California consumers.

13 **9. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

14 **9.1** This Consent Judgment is a full, final, and binding resolution between ERC,  
15 on behalf of itself and in the public interest, and PERVINE/BAKERY and its respective  
16 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
17 suppliers, franchisees, licensees, customers (not including private label customers of  
18 PERVINE/BAKERY), distributors, wholesalers, retailers, and all other upstream and  
19 downstream entities in the distribution chain of any Covered Product, and the predecessors,  
20 successors, and assigns of any of them (collectively, "Released Parties"). ERC, on behalf of  
21 itself and in the public interest, hereby fully releases and discharges the Released Parties from  
22 any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties,  
23 fees, costs, and expenses asserted, or that could have been asserted from the handling, use, or  
24 consumption of the Covered Products, as to any alleged violation of Proposition 65 or its  
25 implementing regulations arising from the failure to provide Proposition 65 warnings on the  
26 Covered Products regarding lead up to and including the Effective Date.

27 **9.2** ERC on its own behalf only, and PERVINE/BAKERY on its own behalf  
28 only, further waive and release any and all claims they may have against each other for all

1 actions or statements made or undertaken in the course of seeking or opposing enforcement of  
2 Proposition 65 in connection with the Notices and Complaint up through and including the  
3 Effective Date, provided, however, that nothing in Section 9 shall affect or limit any Party's  
4 right to seek to enforce the terms of this Consent Judgment.

5 **9.3** It is possible that other claims not known to the Parties, arising out of the facts  
6 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be  
7 discovered. ERC on behalf of itself only, and PERVINE/BAKERY on behalf of itself only,  
8 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
9 claims up through and including the Effective Date, including all rights of action therefore.  
10 ERC and PERVINE/BAKERY acknowledge that the claims released in Sections 9.1 and 9.2  
11 above may include unknown claims, and nevertheless waive California Civil Code section  
12 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
14 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
15 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
16 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
DEBTOR OR RELEASED PARTY.

17 ERC on behalf of itself only, and PERVINE/BAKERY on behalf of itself only, acknowledge  
18 and understand the significance and consequences of this specific waiver of California Civil  
19 Code section 1542.

20 **9.4** Compliance with the terms of this Consent Judgment shall be deemed to  
21 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
22 in the Covered Products as set forth in the Notices and Complaint.

23 **9.5** Nothing in this Consent Judgment is intended to apply to any occupational or  
24 environmental exposures arising under Proposition 65, nor shall it apply to any of  
25 PERVINE/BAKERY's products other than the Covered Products.

## 26 **10. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

27 In the event that any of the provisions of this Consent Judgment are held by a court to be  
28 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

1     **11. GOVERNING LAW**

2             The terms and conditions of this Consent Judgment shall be governed by and construed in  
3 accordance with the laws of the State of California. In the event that Proposition 65 is repealed, or  
4 otherwise invalidated, by regulation or case law, and as a result of such repeal or invalidation the  
5 Covered Products are no longer subject to Proposition 65, then PERVINE/BAKERY shall have no  
6 further obligations as to the injunctive terms pursuant to this Consent Judgment with respect to,  
7 and to the extent that, the Covered Products are so affected.

8     **12. PROVISION OF NOTICE**

9             All notices required to be given to either Party to this Consent Judgment by the other shall  
10 be in writing and sent to the following agents listed below via first-class mail or via electronic mail  
11 where required. Courtesy copies via email may also be sent.

12 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

13 Chris Heptinstall, Executive Director, Environmental Research Center  
14 3111 Camino Del Rio North, Suite 400  
15 San Diego, CA 92108  
16 Ph: (619) 500-3090  
17 Email: chris.heptinstall@erc501c3.org

18 With a copy to:  
19 MATTHEW C. MACLEAR  
20 ANTHONY M. BARNES  
21 AQUA TERRA AERIS LAW GROUP  
22 490 43<sup>rd</sup> Street, Suite 108  
23 Oakland, CA 94609  
24 Ph: 415-568-5200  
25 Email: mcm@atalawgroup.com

26 **PERVINE FOODS, LLC, individually and doing business as CHEF ROBERT IRVINE'S**  
27 **FIT CRUNCH; BAKERY BARN, INC., individually and doing business as CHEF**  
28 **ROBERT IRVINE'S FIT CRUNCH**

29 Jim Perich  
30 Bakery Barn, Inc.  
31 111 Terence Drive  
32 Pittsburgh, PA 15236  
33 Ph: (412) 655-1113

34 ///  
35 ///

1 With a copy to:  
2 CELESTE M. BRECHT  
3 MATTHEW M. GURVITZ  
4 VENABLE, LLP  
5 2049 Century Park E, Ste 2300  
6 Los Angeles, CA 90067  
7 Ph: 310-229-9900  
8 Email: cmbrecht@venable.com  
9 mmgurvitz@venable.com  
10

11 **13. COURT APPROVAL**

12 **13.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
13 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
14 Consent Judgment.

15 **13.2** If the California Attorney General objects to any term in this Consent Judgment,  
16 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
17 prior to the hearing on the motion.

18 **13.3** If this Consent Judgment is not approved by the Court, the Parties shall meet  
19 and confer to determine whether to modify the terms of the Consent Judgment and to resubmit  
20 it to the Court for approval. In the event, after completing the meet and confer process, the  
21 Parties do not reach an agreement to modify and resubmit the Consent Judgment to the Court,  
22 (a) this Consent Judgment and any and all prior agreements relating to the Consent Judgment  
23 reached between the Parties herein shall terminate and become null and void, and the action  
24 shall revert to the status that existed prior to the execution date of this Consent Judgment; and  
25 (b) no term of this Consent Judgment or any draft thereof, or of the negotiation, documentation,  
26 or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any  
27 such matter be admissible in evidence at trial for any purpose in this action, or in any other  
28 proceeding.

1 **14. EXECUTION AND COUNTERPARTS**

2 This Consent Judgment may be executed in counterparts, which taken together shall be  
3 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid  
4 as the original signature.



1     **15. DRAFTING**

2             The terms of this Consent Judgment have been reviewed by the respective counsel for each  
3 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and  
4 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and  
5 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,  
6 and no provision of this Consent Judgment shall be construed against any Party, based on the fact  
7 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any  
8 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
9 equally in the preparation and drafting of this Consent Judgment.

10     **16. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

11             If a dispute arises with respect to either Party's compliance with the terms of this Consent  
12 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in  
13 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be  
14 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

15     **17. ENFORCEMENT**

16             ERC may, by motion or order to show cause before the Superior Court of Alameda  
17 County, enforce the terms and conditions contained in this Consent Judgment. In any action  
18 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,  
19 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.  
20 To the extent the failure to comply with the Consent Judgment constitutes a violation of  
21 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,  
22 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by  
23 law for failure to comply with Proposition 65 or other laws.

24     **18. ENTIRE AGREEMENT, AUTHORIZATION**

25             **18.1** This Consent Judgment contains the sole and entire agreement and  
26 understanding of the Parties with respect to the entire subject matter herein, and any and all  
27 prior discussions, negotiations, commitments, and understandings related hereto. No  
28 representations, oral or otherwise, express or implied, other than those contained herein have

1 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
2 herein, shall be deemed to exist or to bind any Party.

3 **18.2** Each signatory to this Consent Judgment certifies that he or she is fully  
4 authorized by the Party he or she represents to stipulate to this Consent Judgment.

5 **19. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
6 **CONSENT JUDGMENT**

7 This Consent Judgment has come before the Court upon the request of the Parties. The  
8 Parties request the Court to fully review this Consent Judgment and, being fully informed  
9 regarding the matters which are the subject of this action, to:

10 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
11 equitable settlement of all matters raised by the allegations of the Complaint that the matter has  
12 been diligently prosecuted, and that the public interest is served by such settlement; and

13 (2) Make the findings pursuant to California Health and Safety Code section  
14 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

15 **IT IS SO STIPULATED:**

16 Dated: April 7, 2021

ENVIRONMENTAL RESEARCH  
CENTER, INC.

17  
18  
19 By:   
20 Chris Heptinstall, Executive Director

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Dated: 3-31, 2021

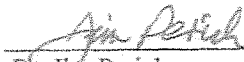
PERVINE FOODS, LLC



By: Patrick Cornacchiulo  
Its: Chief Executive Officer

BAKERY BARN, INC.

Dated: 3-30, 2021

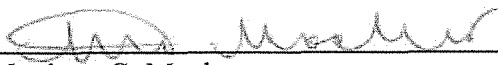


By: Jim Perich  
Its: Executive Vice President

1 **APPROVED AS TO FORM:**


2  
3 Dated: April 7, 2021

AQUA TERRA AERIS LAW GROUP

4  
5 By:   
6 Matthew C. Maclear  
7 Anthony M. Barnes  
8 Attorneys for Plaintiff Environmental  
9 Research Center, Inc.

10 Dated: March 31, 2021

VENABLE, LLP

11 By:   
12 Celeste M. Brecht  
13 Matthew M. Gurvitz  
14 Bryan J. Weintrop  
15 Attorneys for Defendants Pervine Foods,  
16 LLC, individually and dba Chef Robert  
17 Irvine's Fit Crunch; Bakery Barn, Inc.,  
18 individually and dba Chef Robert Irvine's  
19 Fit Crunch  
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1 **[PROPOSED] ORDER AND JUDGMENT**

2 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is  
3 approved and Judgment is hereby entered according to its terms.

4 IT IS SO ORDERED, ADJUDGED AND DECREED.

5  
6 Dated: \_\_\_\_\_, 2021

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7 Judge of the Superior Court

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