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9 Attorneys for Plaintiff
10 Kim Embry

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF ALAMEDA**

14 KIM EMBRY, an individual,
15 Plaintiff,
16 v.
17 SPROUTS FARMERS MARKET, INC., *et al.*,
18 Defendants.

Case No.: RG19011780
[PROPOSED] CONSENT JUDGMENT AS TO
BAY VALLEY FOODS, LLC.
(Health & Safety Code § 25249.6 *et. seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Kim Embry (“Embry”) on one hand,
4 and Bay Valley Foods, LLC (“Defendant” or “BVF”) on the other hand, with Embry and BVF
5 individually referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Embry is an individual residing in California and acting in the interest of the general public.
8 She seeks to promote awareness of exposures to toxic chemicals and to improve human health by
9 reducing or eliminating hazardous substances.

10 **1.3 Defendant**

11 BVF employs ten or more individuals and is a “person in the course of doing business” for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Embry alleges that BVF manufactures, imports, sells, and distributes for sale in California
16 certain frozen waffles that contain acrylamide. Embry further alleges that BVF does so without
17 providing a sufficient health hazard warning as required by Proposition 65 and related regulations.
18 Pursuant to Proposition 65, acrylamide is listed as a chemical known to cause cancer and reproductive
19 harm. BVF denies that warnings are required under Proposition 65 for any exposures to acrylamide in
20 the Products, and BVF maintains that it has complied with all applicable federal and state laws,
21 including but not limited to Proposition 65.

22 **1.5 Product Description**

23 For purposes of this Consent Judgment “Product” or “Products” are defined as those waffle
24 products listed in Exhibit A that are manufactured, imported, sold, or distributed for sale in California
25 by BVF. BVF may update from time to time the list of waffle products to be covered in this Consent
26 Judgment as “Additional Products” by providing written notice to Embry and updating Exhibit A to
27 include such products.

1 **1.6 Notices of Violation**

2 On August 24, 2018, Embry served Sprouts Farmers Market, Inc. (“Sprouts”), the California
3 Attorney General, and all other required public enforcement agencies with a 60-Day Notice of
4 Violation of California Health and Safety Code section 25249.6 *et seq.* (“Original Notice”). The 2019
5 Notice alleged that Sprouts violated Proposition 65 by failing to sufficiently warn consumers of
6 alleged exposures to acrylamide in Sprouts Blueberry Waffles.

7 On December 18, 2019, Embry served BVF, Sprouts, the California Attorney General, and all
8 other required public enforcement agencies with a 60-Day Notice of Violation of California Health
9 and Safety Code section 25249.6 *et seq.* (“Second Notice”). The Second Notice alleged that BVF
10 violated Proposition 65 by failing to sufficiently warn consumers in California of alleged exposures
11 to acrylamide in Sprouts Blueberry Waffles.

12 On or around April 27, 2020, Embry served BVF, Sprouts, the California Attorney General,
13 and all other required public enforcement agencies with a 60-Day Notice of Violation of California
14 Health and Safety Code section 25249.6 *et seq.* (“Third Notice”). The Third Notice alleged that
15 BVF violated Proposition 65 by failing to sufficiently warn consumers in California of alleged
16 exposures to acrylamide in waffle products manufactured by BFV, including but not limited to
17 Sprouts Blueberry Waffles.

18 The Original Notice, Second Notice, and Third Notice are referred to collectively herein as the
19 “Notices.”

20 **1.7 Complaint**

21 On March 21, 2019, Embry filed a Complaint against Sprouts for the alleged violations of
22 Health and Safety Code section 25249.6 asserted in the Original Notice. On February 18, 2020, Embry
23 amended the Complaint to add BVF as a defendant in the action (“Complaint”). Upon entry of this
24 Consent Judgment, the Complaint shall be deemed to be amended *nunc pro tunc* to include allegations
25 asserted in the Second Notice and Third Notice with respect to the Products.

26 **1.8 No Admission**

27 By stipulating to the entry of this Consent Judgment and agreeing to provide the relief and
28 remedies specified herein, BVF does not admit that is has violated, or threatened to violate, Proposition

1 65 or any other law or legal duty, and BVF does not admit that the chemical acrylamide in food poses
2 any risk to human health.

3 Nothing in this Consent Judgment shall be construed as an admission of any fact, finding,
4 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment
5 be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law.
6 This Section shall not, however, diminish or otherwise affect BVF's obligations, responsibilities, and
7 duties under this Consent Judgment, subject to subsequent modifications thereof or Court orders
8 regarding any such obligation, responsibility, and/or duty.

9 **1.9 Jurisdiction**

10 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
11 Court has jurisdiction over BVF as to the allegations in the Complaint, that venue is proper in the
12 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
13 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

14 **1.10 Effective Date and Compliance Date**

15 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
16 notice of entry of this Consent Judgment by the Court is served on BVF. For the Products, the
17 Compliance Date is the date that is six (6) months after the Effective Date. For the Additional Products
18 that are added to Exhibit A, the Compliance Date shall be the date that is twelve (12) months after the
19 Effective Date or sixty (60) days after BVF issues an updated Exhibit A, whichever is later.

20 **2. INJUNCTIVE RELIEF**

21 **2.1 Reformulation of the Product**

22 Any Products that are manufactured by BVF on and after the Compliance Date that are
23 thereafter sold in California or distributed for sale in California shall not exceed 280 ppb on average
24 for acrylamide ("Reformulation Level"), as set forth in this Section 2. As used in this Section 2.1,
25 "distributed for sale in California" means to directly ship a Product into California or to sell a Product
26 to a distributor that BVF knows will sell the Product in California.

1 **2.2 Testing**

2 (a) Compliance with the Reformulation Level shall be determined using LC-MC/MS
3 (Liquid Chromatograph-Mass Spectrometry), GC/MS (Gas Chromatography/Mass Spectrometry), or
4 any other testing method agreed upon by the Parties. Any testing for purposes of Section 2.1 shall be
5 performed by any laboratory accredited by the State of California, a federal agency, or a nationally
6 recognized organization.

7 (b) Compliance with the Reformulation Level shall be determined after preparing the
8 Product as if prepared for consumption in accordance with the instructions on the packaging label of
9 the Product and in accordance with the sample preparation protocol in Exhibit B. In addition, in
10 determining compliance with the Reformulation Level, the average of at least three samples drawn
11 from three different production lots of each type of Product (or from as many lots or batches as are
12 available if there are fewer than three), but no more than ten samples drawn from ten different product
13 lots of each type of Product, shall be controlling.

14 **2.3 Sell-Through Period**

15 Notwithstanding anything else in this Consent Judgment, the Products that are manufactured
16 on or prior to the Compliance Date shall be subject to release provisions of Section 4, without regard
17 to when such products were, or are in the future, distributed or sold to customers. As a result, the
18 obligations in Section 2.1 and 2.2 do not apply to Products manufactured prior to the Compliance
19 Date.

20 **3. MONETARY SETTLEMENT TERMS**

21 **3.1 Settlement Amount**

22 Defendant shall pay Fifty Thousand dollars (\$50,000.00) in settlement and total satisfaction of
23 all the claims referred to in the Notices, the Complaint, and this Consent Judgment. This includes civil
24 penalties in the amount of Five Thousand dollars (\$5,000.00) pursuant to Health and Safety Code
25 section 25249.7(b) and attorney's fees and costs in the amount of Forty-Five Thousand dollars
26 (\$45,000.00) pursuant to Code of Civil Procedure section 1021.5 and Health and Safety Code section
27 25249 et seq.

1 **3.2 Civil Penalty**

2 The portion of the settlement attributable to civil penalties shall be allocated according to
3 Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty
4 paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and the
5 remaining twenty-five percent (25%) of the penalty paid to Embry.

6 All payments owed to Embry, shall be delivered to the following payment address:

7 Noam Glick
8 Glick Law Group
9 225 Broadway, Suite 2100
 San Diego, CA 92101

10 All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA (Memo
11 line “Prop 65 Penalties) at the following addresses:

12 For United States Postal Delivery:

13 Mike Gyuries
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
 P.O Box 4010
16 Sacramento, CA 95812-4010

17 For Non-United States Postal Service Delivery:

18 Mike Gyuries
19 Fiscal Operations Branch Chief
20 Office of Environmental Health Hazard Assessment
 1001 I Street
 Sacramento, CA 95814

21 BVF agrees to provide Embry’s counsel with a copy of the check payable to OEHHA
22 simultaneous with its penalty payment to Embry.

23 The Parties will exchange completed IRS 1099, W-9, or other forms as required. Relevant
24 information for Glick Law Group and N&T are set out below:

- 25 • “Kim Embry” whose address and tax identification number shall be provided within
26 five (5) days after this Consent Judgment is fully executed by the Parties;
- 27 • “Glick Law Group” (EIN: 47-1838518) at address provided in Section 3.2;
- 28 • “Nicholas & Tomasevic” (EIN: 46-3474065) at address provided in Section 3.3; and

- 1 • “Office of Environmental Health Hazard Assessment at 1001 I Street, Sacramento, CA
2 95814.

3 **3.3 Attorney’s Fees and Costs**

4 The portion of the settlement attributable to attorneys’ fees and costs shall be paid to Embry’s
5 counsel, who are entitled to attorney’s fees and costs incurred by her in this action, including but not
6 limited to investigating potential violations, bringing this matter to Defendant’s attention, as well as
7 litigating and negotiating a settlement in the public interest.

8 Defendant shall provide its payment to Embry’s counsel in two checks, divided equally,
9 payable to Glick Law Group, PC (\$22,500.00) and Nicholas & Tomasevic, LLP (\$22,500.00)
10 respectively. The addresses for these two entities are:

11 Noam Glick
12 Glick Law Group
13 225 Broadway, Suite 2100
14 San Diego, CA 92101

15 Craig Nicholas
16 Nicholas & Tomasevic, LLP
17 225 Broadway, 19th Floor
18 San Diego, CA 92101

19 **3.4 Timing**

20 The above-mentioned checks will be issued within fourteen (14) days of the Effective Date.

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Embry’s Public Release of Proposition 65 Claims**

23 This Consent Judgment is a full, final, and binding resolution between, on the one hand,
24 Embry, on behalf of herself and her attorneys, investigators, agents, heirs, and assigns (collectively
25 referred to as “Embry Releasers”) and on behalf of the public in the public interest, and, on the other
26 hand, BVF and its parents, subsidiaries, affiliated entities under common ownership, its directors,
27 officers, principals, agents, employees, attorneys, insurers, accountants, predecessors, successors, and
28 assigns (“BVF Entities”), and each entity to whom BVF directly or indirectly distributes, ships, or
 sells the Products including but not limited to downstream distributors, wholesalers, customers,
 retailers (including but not limited to Sprouts), franchisees, cooperative members, and licensees, and

1 their owners, directors, officers, agents, principals, employees, attorneys, insurers, accountants,
2 representatives, predecessors, successors, and assigns (collectively referred to as the "Releasees"), of
3 all claims that have been or could have been asserted under Proposition 65 for any exposures to
4 acrylamide from the Products manufactured, purchased, distributed, or sold by BVF before the
5 Compliance Date. Compliance with the terms of this Consent Judgment constitutes compliance with
6 Proposition 65 with respect to any exposures to acrylamide from Products manufactured, purchased,
7 sold, or distributed by BVF on and after the Compliance Date.

8 **4.2 Embry's Individual Release of Claims**

9 Embry, in her individual capacity, on behalf of herself and the Embry Releasors, also waives
10 all rights to institute or participate in, directly or indirectly, any form of legal action, and discharges
11 and releases all claims, actions, causes of action (in law or in equity), suits, liabilities, demands,
12 obligations, damages, costs, fines, penalties, losses, expenses, and fees (including, but not limited to,
13 investigation fees, expert fees, and attorney's fees), and expenses (collectively, "Claims") as to all
14 Releasees under Proposition 65 or any statutory or common law from the alleged failure to provide
15 warnings for any exposures to acrylamide, or for causing any exposures to acrylamide, in the
16 Products and the Additional Products that are manufactured, purchased sold, or distributed by BVF,
17 provided that such products comply with Section 2 of this Consent Judgment . The release in this
18 Section 4.2 is effective as a full and final accord and satisfaction, as a bar to all Claims of any nature,
19 character or kind, whether known or unknown, or suspected or unsuspected. Embry acknowledges
20 that she is familiar with Section 1542 of the California Civil Code, which provides as follows:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
22 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
23 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
24 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
25 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
26 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
27 OR RELEASED PARTY.

25 Embry understands and acknowledges the significance and consequence of this waiver of California
26 Civil Code section 1542.

1 **4.3 BVF's Release of Embry**

2 BVF, on its own behalf, and on behalf of the BVF Entities, hereby waives any and all claims
3 against Embry and her attorneys and other representatives, for any and all actions taken or statements
4 made by Embry and her attorneys and other representatives, whether in the course of investigating
5 claims, otherwise seeking to enforce Proposition 65 against it, in this matter or with respect to the
6 Products. The release in this Section 4.3 is effective as a full and final accord and satisfaction, as a
7 bar to all Claims of any nature, character or kind, whether known or unknown, or suspected or
8 unsuspected. BVF acknowledges that it is familiar with Section 1542 of the California Civil Code,
9 which provides as follows:

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

14 BVF understands and acknowledges the significance and consequence of this waiver of California
15 Civil Code section 1542.

16 **4.4** Nothing in Section 4 affects or limits the right of any Party to enforce the terms of this
17 Consent Judgment.

18 **5. COURT APPROVAL**

19 **5.1** This Consent Judgment is not effective until it is approved and entered by the Court
20 and shall be null and void if it is not approved and entered by the Court within one year after it has
21 been fully submitted to the Court by the Parties, or by such additional time as the Parties may agree to
22 in writing.

23 **6. SEVERABILITY**

24 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is
25 held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely
26 affected.

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the state of California
3 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
4 rendered inapplicable for reasons, including but not limited to changes in the law, then Defendant may
5 provide written notice to Embry of any asserted change, and shall have no further injunctive
6 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
7 so affected.

8 **8. NOTICE**

9 Unless specified herein, all correspondence and notice required by this Consent Judgment shall
10 be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail, return
11 receipt requested; or (iii) a recognized overnight courier to the following addresses:

12 For BVF:

13 Sarah Esmaili
14 Arnold & Porter
15 Three Embarcadero Center, 10th Floor
16 San Francisco, CA 94111

12 For Embry:

13 Noam Glick
14 Glick Law Group, PC
15 225 Broadway, 21st Floor
16 San Diego, CA 92101

17 Any Party may, from time to time, specify in writing to the other, a change of address to which
18 all notices and other communications shall be sent.

18 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

19 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
20 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
21 same document.

22 **10. POST EXECUTION ACTIVITIES**

23 **10.1** Embry agrees to comply with the reporting form requirements referenced in Health and
24 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
25 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement,
26 which motion Embry shall draft and file. In furtherance of obtaining such approval, the Parties agree
27 to mutually employ their best efforts, including those of their counsel, to support the entry of this
28 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For

1 purposes of this Section, “best efforts” shall include, at a minimum, supporting the motion for
2 approval, responding to any objection that any third-party may make, and appearing at the hearing
3 before the Court if so requested.

4 **10.2** Within ten (10) days of entry of this Consent Judgment, Embry shall file a request for
5 dismissal of Sprouts without prejudice.

6 **11. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES; ENFORCEMENT**

7 **11.1** If a dispute arises with respect to either Party’s compliance with the terms of this
8 Consent Judgment entered by the Court, the Party alleging a violation of the Consent Judgment shall
9 provide the other Party written notice of the alleged violation. The Parties shall meet and confer in
10 person, by telephone, and/or in writing and endeavor to resolve the dispute in an amicable manner.
11 No action or motion may be filed in the absence of such a good faith attempt to resolve the dispute
12 beforehand.

13 **11.2** If Embry alleges a violation of Section 2, the written notice shall, at a minimum, set
14 forth the following for each Product item issue in the notice: (a) the date the Product was purchased;
15 (b) the location at which the Product was purchased; (c) a description of the Product giving rise to the
16 alleged violation, including the name and address of the retail entity from which the sample was
17 obtained and pictures of the product packaging from all sides, which identifies the product lot; (d) all
18 test data obtained by Embry regarding the Product and supporting documentation sufficient for
19 validation of test results, including any laboratory reports, quality assurance reports, and quality
20 control reports associated with testing of the Product. Embry shall not bring an enforcement action or
21 institute a judicial proceeding as to compliance with Section 2 if BVF demonstrates it has complied
22 with the requirements of Section 2. BVF is entitled to designate such information as confidential.

23 **11.3** In the event that meet and confer efforts are unsuccessful, the Party alleging a
24 violation may initiate a judicial proceeding to enforce this Consent Judgment no earlier than 60 days
25 after issuing the written notice specified in this Section 11. In the event that a Party initiates such a
26 judicial proceeding, the prevailing Party shall be entitled to recover its reasonable attorneys’ fees and
27 costs.

1 **12. MODIFICATION**

2 **12.1 Modification.** This Consent Judgment may be modified only by: (i) a written
3 agreement of the Parties and entry of a modified consent judgment thereon by the Court; or (ii) a
4 successful motion or application of any Party, and the entry of a modified consent judgment thereon
5 by the Court.

6 **12.2 Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
7 attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the
8 Consent Judgment.

9 **12.3 Change in Proposition 65.** If Proposition 65 or its implementing regulations (including
10 but not limited to the published "no significant risk level" for acrylamide set forth at Cal. Code Regs.,
11 tit. 27, section 25705, subdivision (c)(2) or any "alternative risk level" adopted by regulation or court
12 decision) are changed from their terms as they exist on the date of entry of this Consent Judgment, or
13 if OEHHA takes some other final regulatory action that determines that warnings for acrylamide are
14 not required or modifies the standard for warnings for acrylamide, then BVF may seek to modify this
15 Consent Judgment.

16 **12.4 Other Court Decisions.** If a final decision of a court determines that warnings for
17 acrylamide exposures or that enforcement of Proposition 65 claims for acrylamide exposures are
18 preempted or otherwise unlawful or unconstitutional, then BVF may move to modify this Consent
19 Judgment to conform to such ruling in order to avoid unfair, inconsistent, or anti-competitive results.

20 **12.5. Federal Agency Action and Preemption.** If a court of competent jurisdiction or an
21 agency of the federal government, including, but not limited to, the U.S. Food and Drug
22 Administration, states through any guidance, regulation or legally binding act that federal law has
23 preemptive effect on any of the requirements of this Consent Judgment, then BVF may seek to modify
24 this Consent Judgment in accordance with the procedure for noticed motions set forth in Section 12.1
25 to bring it into compliance with or avoid conflict with federal law.

26 **12.6 Scientific Studies.** If an agency of the federal government, including, but not limited
27 to the U.S. Food and Drug Administration, states through any guidance, regulation, or other legally
28 binding act, following a review of scientific studies and following public notice and comment, a cancer

1 potency estimate for acrylamide that equates to a no significant risk level higher than 0.2 micrograms
2 per day, then BVF may seek to modify this Consent Judgment.

3 **12.7** Before filing any motion to modify the Consent Judgment, BVF shall provide written
4 notice to Embry to initiate the meet and confer procedure in Section 12.2. If the Parties do not agree
5 on the proposed modification during informal meet and confer efforts, BVF may file a motion to
6 modify the Consent Judgment within sixty (60) days of the date of the written notice that BVF provides
7 to Embry under this Section 12. Any modification of this Consent Judgment shall have no effect on
8 Defendant's financial obligations as provided herein.

9 **13. ENTIRE AGREEMENT**

10 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
11 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,
12 commitments, and understandings related hereto. No representations, oral or otherwise, express or
13 implied, other than those contained herein have been made by any Party. No other agreements, oral
14 or otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

15 **14. RETENTION OF JURISDICTION**

16 This Court shall retain jurisdiction of this matter to implement or modify the Consent
17 Judgment. Notwithstanding the provisions of Section 12, nothing in this Consent Judgment limits or
18 affects the Court's authority to modify this Consent Judgment as provided by law.

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15. AUTHORIZATION


The undersigned are authorized to execute this Consent Judgment and acknowledge that they have read, understand, and agree to all of the terms and conditions contained herein.

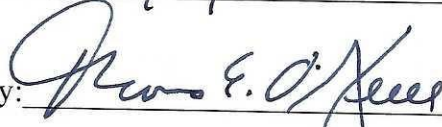
AGREED TO:

AGREED TO BY BAY VALLEY FOODS, LLC

Date: 4/29/2020

Date: 5/5/20

By: 
Kim Embry

By: 
THOMAS E. O'NEIL [print name]

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____

JUDGE OF THE SUPERIOR COURT

EXHIBIT A

Products:

- Sprouts Blueberry Waffles
- Organic Mini Blueberry Waffles
- Organic Mini Homestyle Waffles
- Organic Flax Waffles
- Multigrain Waffles
- Homestyle Waffles
- Chocolate Chip Waffles
- Traditional Belgian Waffles
- Buttermilk Waffles
- Blueberry Waffles
- Cinnamon Waffles

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EXHIBIT B

Note: where more than one preparation method is included in addition to the conventional oven preparation method, the product should be tested using the conventional oven method.

- I. A sample shall be a single waffle
- II. Equipment Preparation

A conventional household 30 inch electric standard size oven should be used to prepare all samples for acrylamide analysis.

 - a. Oven Calibration
 - i. The oven is to be preheated to the baking temperature specified in the cooking instruction for the product, and then calibrated through three heating cycles. The midpoint of the heating cycle should be the recommended preparation temperature. The oven's heating cycles range must not exceed 50°F. The ovens must be calibrated at least monthly.
 - ii. Thermometers used to calibrate ovens should be calibrated prior to use according to a standard ice point and boiling point method.
 - b. Preheat a calibrated oven for at least 30 minutes prior to preparing products.
 - c. Use 17" x 11" baking sheet and follow all cooking instructions provided on the packaging for the product being tested.
 - d. Use oven rack in the middle of the oven.
 - e. Allow oven to return to baking temperature 10 minutes after removing prior sample product from oven prior to baking next sample
- III. Product Preparation
 - a. Record temperature of product prior to cooking. Product temperature must be between 0°F and 15°F when preparation is begun.
 - b. If a label's recommended method includes a range of cooking temperatures or times, the midpoint of those ranges shall be used.
 - c. When cooking time expires, immediately remove product from oven, and transfer from the baking sheet to a container that is at room temperature. Cool product 5 minutes at room conditions and then place uncovered in a freezer.
 - d. Once product is frozen, if the sample is to be transported to a laboratory, transfer to an appropriately labeled, sealed container and keep frozen until analyzed for acrylamide.
 - e. The directions to the testing laboratory shall provide for the sample to be homogenized prior to analysis.