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Attorneys for Plaintiff  
Environmental Health Advocates, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF ALAMEDA**

ENVIRONMENTAL HEALTH  
ADVOCATES, INC.,

Plaintiff,

v.

MONDELÉZ GLOBAL, LLC, a Delaware  
Corporation, SAFEWAY INC., a Delaware  
corporation, and DOES 1 through 100,  
inclusive

Defendants.

Case No.: RG21087487

[PROPOSED] CONSENT JUDGMENT AS  
TO MONDELÉZ GLOBAL, LLC

1     **1. INTRODUCTION**

2             **1.1 Parties**

3             This Consent Judgment is entered into by and between Environmental Health Advocates, Inc.  
4     (“EHA”) on one hand, and Mondelēz Global, LLC (“Defendant” or “MDLZ”) on the other hand, with  
5     EHA and Defendant individually referred to as a “Party” and collectively as the “Parties.”

6             **1.2 Plaintiff**

7             EHA is an organization residing in California, acting in the interest of the general public. It  
8     seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing  
9     or eliminating hazardous substances contained in consumer products.

10            **1.3 Defendant**

11            Defendant employs ten or more individuals and is a “person in the course of doing business”  
12   for 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            EHA alleges that Defendant manufactures, imports, sells, and distributes for sale in California,  
16   gluten-free corn snacks that contain Acrylamide. EHA further alleges that Defendant has not provided  
17   warnings under Proposition 65 for such products. Pursuant to Proposition 65, Acrylamide is listed as  
18   a chemical known to cause cancer and reproductive harm. MDLZ denies that warnings are required  
19   under Proposition 65 for any exposures to acrylamide in the Products, and MDLZ maintains that it has  
20   complied with all applicable federal and state laws, including but not limited to Proposition 65.

21            **1.5 Product Description**

22            For purposes of this Consent Judgment, the “Product” or “Products” are defined as all  
23   gluten-free snacks under the Good Thins brand that are manufactured, imported, sold, or distributed  
24   for sale in California by Defendant, including but not limited to Good Thins Gluten Free Sea Salt Corn  
25   Snacks.

26            **1.6 Notices of Violation**

27            On October 5, 2020 EHA served Defendant MDLZ, Safeway Inc., the California Attorney  
28   General, and all other required public enforcement agencies with a 60-Day Notice of Violation of

1 California Health and Safety Code section 25249.6 *et seq.* (“Original Notice”). The Original Notice  
2 alleged that Defendant violated Proposition 65 by failing to provide warnings for alleged exposures to  
3 Acrylamide in Good Thins Gluten Free Sea Salt Corn Snacks.

4 On March 19, 2021, Plaintiff issued a supplemental 60-Day Notice of Violation of California  
5 Health and Safety Code section 25249.6 *et seq.* claiming violations of Proposition 65 by Defendant  
6 for alleged exposures to acrylamide in all Good Thin snacks (“Supplemental Notice”). The  
7 Supplemental Notice was served on Defendant, the California Attorney General, and all other required  
8 California public prosecutors.

9 The Original Notices and Supplemental Notice are collectively referred to as the “Notices.”

#### 10 **1.7 Complaint**

11 On or about February 2, 2021, EHA filed a Complaint against Defendant for the alleged  
12 violations of Health and Safety Code section 25249.6 that are the subject of the Notices (“Complaint”).  
13 Upon entry of this Consent Judgment, the Complaint shall be deemed amended *nunc pro tunc*  
14 additionally to include allegations asserted in the Supplemental Notice.

#### 15 **1.8 No Admission**

16 By stipulating to the entry of this Consent Judgment and agreeing to provide the relief and  
17 remedies specified herein, MDLZ does not admit that it has violated, or threatened to violate,  
18 Proposition 65 or any other law or legal duty, and MDLZ does not admit that the chemical acrylamide  
19 in food poses any risk to human health.

20 Nothing in this Consent Judgment shall be construed as an admission of any fact, finding,  
21 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment  
22 be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law.  
23 This Section shall not, however, diminish or otherwise affect Defendant’s obligations, responsibilities,  
24 and duties under this Consent Judgment.

#### 25 **1.9 Jurisdiction**

26 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this  
27 Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in  
28

the County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

### **1.10 Effective Date and Compliance Date**

For purposes of this Consent Judgment, the term “Effective Date” means the date on which the Court enters this Consent Judgment, as discussed in Section 5. The Compliance Date is the date that is six (6) months after the Effective Date.

## **2. INJUNCTIVE RELIEF**

**2.1** Any Products that are manufactured or purchased by Defendant on and after the Compliance Date that it thereafter sells in California or distributes for sale in California shall either (1) not exceed 350 parts per billion (“ppb”) acrylamide, as set forth in Section 2.2 (“Acrylamide Limit”) or (2) comply with the warning requirements of Section 2.3.

**2.1.1.** As used in this Section 2.1, distribution for sale in California refers to directly shipping a Product into California or to sell a Product to a distributor that Defendant knows will sell the Product in California.

### **2.2 Testing**

(a) Compliance with the 350 ppb acrylamide limit shall be determined using LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), GC/MS/MS (Gas Chromatography/Mass Spectrometry), or any other testing method agreed upon by the Parties. Any testing for purposes of Section 2.1 shall be performed by any laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization.

(b) The Acrylamide Limit is determined by randomly selecting and testing, over no less than a ten-day period, one sample from up to five lots of Products produced at locations that supply such Products to California (“Sampling Data”). The mean and standard deviation shall be calculated using the Sampling Data. Any data points that are more than three standard deviations outside the mean shall be discarded once, and the mean and standard deviation recalculated using the remaining data points. The arithmetic mean determined in accordance with this procedure shall be used to measure compliance with the Acrylamide Limit.

### 2.3 Warnings

If Defendant provides warnings under Section 2.1, Products may be sold in California with one of the following warning statements:

#### Option 1:

**WARNING:** Consuming this product can expose you to chemicals including acrylamide, which is known to the State of California to cause cancer [and birth defects or other reproductive harm]. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

#### Option 2:

**WARNING:** Cancer [and Reproductive Harm] – [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food)

The warning in Option 2 may be used only if the warning appears on the product container or labeling. Terms in bracketing are optional. The word “**WARNING**” shall be displayed in all capital letters and bold print. This warning statement shall be prominently displayed on the Product, on the packaging of the Product, or on a placard, shelf tag, or sign, provided that the statement is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual prior to sale. If the warning statement is displayed on the Product’s label, it must be set off from other surrounding information and enclosed in a text box. If the warning statement is displayed on a placard, shelf tag, or sign where the Product is offered for sale, the warning placard or sign must enable an ordinary individual to easily determine which Products the warning applies to, and to differentiate between the Products and other products to which the warning statement does not apply. For sales by Defendant on the internet or by catalog where the consumer is not physically present, the warning statement shall be displayed in such a manner that it is likely to be read and understood by an ordinary individual prior to the authorization of or actual payment.

### 2.4 Grace Period for Existing Inventory of Products

Notwithstanding anything else in this Consent Judgment, the Products that are manufactured prior to the Compliance Date shall be subject to release of liability pursuant to this Consent Judgment, without regard to when such Products were, or are in the future, distributed or sold to customers. As a

1 result, the obligation of MDLZ, or any Releasees (if applicable), do not apply to these Products  
2 manufactured on or prior to the Compliance Date.

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Settlement Amount**

5 Defendant shall pay ninety-five thousand (\$95,000) in settlement and total satisfaction of all  
6 the claims referred to in the Notices, the Complaint, and this Consent Judgment. This includes civil  
7 penalties in the amount of nine thousand dollars (\$9,000) pursuant to Health and Safety Code section  
8 25249.7(b) and attorney's fees and costs in the amount of eighty-six thousand dollars (\$86,000)  
9 pursuant to Code of Civil Procedure section 1021.5 and Health and Safety Code section 25249 et seq.

10 **3.2 Civil Penalty**

11 The portion of the settlement attributable to civil penalties shall be allocated according to  
12 Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty  
13 paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the  
14 remaining twenty-five percent (25%) of the penalty paid to EHA.

15 All payments owed to EHA, shall be delivered to the following payment address:

16  
17 Samantha Dice  
18 Environmental Health Advocates, Inc.  
19 225 Broadway, Suite 2100  
20 San Diego, CA 92101

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

23 For United States Postal Service Delivery:

24 Mike Gyurics  
25 Fiscal Operations Branch Chief  
26 Office of Environmental Health Hazard Assessment  
27 P.O. Box 4010  
28 Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

MDLZ agrees to provide EHA's counsel with a copy of the check payable to OEHHA simultaneous with its penalty payment to EHA.

Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required. Relevant information is set out below:

- "Glick Law Group" (EIN: 47-1838518) at address provided in Section 3.3;
- "Nicholas & Tomasevic" (EIN: 46-3474065) at address provided in Section 3.3; and
- "Office of Environmental Health Hazard Assessment" at 1001 I Street, Sacramento, CA 95814.

### **3.3 Attorney's Fees and Costs**

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

Defendant shall provide its payment to EHA's counsel in two checks, divided equally, payable to Glick Law Group, PC (\$43,000) and Nicholas & Tomasevic, (\$43,000) respectively. The addresses for these two entities are:

Noam Glick  
Glick Law Group  
225 Broadway, Suite 1900  
San Diego, CA 92101

Craig Nicholas  
Nicholas & Tomasevic, LLP  
225 Broadway, 19<sup>th</sup> Floor  
San Diego, CA 92101

### 3.4 Timing

The above mentioned checks will be issued within thirty (30) days of the Effective Date.

## 4. CLAIMS COVERED AND RELEASED

### 4.1 EHA's Public Release of Proposition 65 Claims

This Consent Judgment is a full, final, and binding resolution between, on the one hand, EHA, on behalf of itself and its attorneys, investigators, agents, heirs, and assigns (collectively referred to as "EHA Releasers") and on behalf of the public in the public interest, and, on the other hand, MDLZ and its parents, subsidiaries, affiliated entities under common ownership, its directors, officers, principals, agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns ("Defendant Entities"), each entity to whom Defendant directly or indirectly distributes, ships, or sells the Products including but not limited to downstream distributors, wholesalers, customers, and retailers (including but not limited to Safeway Inc.), franchisees, franchisors, cooperative members, suppliers, licensees, and licensors, and all of the foregoing entities' owners, directors, officers, agents, principals, employees, attorneys, insurers, accountants, representatives, predecessors, successors, and assigns (collectively referred to as the "Releasees"), of all claims, actions, causes of action (in law or in equity), suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, and fees (including, but not limited to, investigation fees, expert fees, and attorney's fees), and expenses (collectively, "Claims") that have been or could have been asserted under Proposition 65 for any exposures to acrylamide from the Products manufactured, purchased, distributed, or sold by Defendant before the Compliance Date. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to any exposures to acrylamide from Products manufactured, purchased, sold, or distributed by Defendant on and after the Compliance Date.

### 4.2 EHA's Individual Release of Claims

EHA, in its individual capacity, on behalf of itself and the EHA Releasers, also waives all rights to institute or participate in, directly or indirectly, any form of legal action, and discharges and releases all Claims as to all Releasees under Proposition 65 or any statutory or common law from the alleged failure to provide warnings for any exposures to acrylamide, or for causing any exposures to acrylamide, in the Products and in gluten-free corn snacks products manufactured, purchased,



distributed, or sold by Defendant. The release in this Section 4.2 is effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorney's fees, damages, losses, claims, liabilities, and demands by EHA of any nature, character or kind, whether known or unknown, or suspected or unsuspected. EHA acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
THAT THE CREDITOR OR RELEASING PARTY DOES NOT  
KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT  
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.

EHA understands and acknowledges the significance and consequence of this waiver of California Civil Code section 1542.

#### **4.3 Defendant's Release of EHA**

Defendant, on its own behalf, and on behalf of Releasees as well as its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA and its attorneys and other representatives, for any and all actions taken or statements made by EHA and its attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it, in this matter or with respect to the Products.

#### **5. COURT APPROVAL**

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if it is not approved and entered by the Court within six months after it has been fully submitted to the Court by the Parties, or by such additional time as the Parties may agree to in writing.

#### **6. SEVERABILITY**

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

#### **7. GOVERNING LAW**

The terms of this Consent Judgment shall be governed by the laws of the state of California and apply within the state of California.

**8. NOTICE**

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

**For Defendant:**

Sarah Esmaili  
Arnold & Porter  
Three Embarcadero Center, 10th Fl  
San Francisco, CA 94111

**For EHA:**

Noam Glick  
Glick Law Group, PC  
225 Broadway, STE 1900  
San Diego, CA 92101

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

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

**10. POST EXECUTION ACTIVITIES**

**10.1** EHA agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, including those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this Section, “best efforts” shall include, at a minimum, supporting the motion for approval, responding to any objection that any third-party may make, and appearing at the hearing before the Court if so requested.

**10.2** Within ten (10) days of the Effective Date, EHA shall file a request for dismissal of this action as to all remaining defendants.

1     **11.     ENFORCEMENT**

2             Prior to bringing any motion or order to show cause to enforce the terms of this Consent  
3 Judgment, a Party seeking to enforce the Consent Judgment shall provide the other Party written  
4 notice of the alleged violation. The Parties shall meet and confer in an effort to try to reach  
5 agreement on an appropriate cure for the alleged violation. EHA shall not bring an enforcement  
6 action or institute a judicial proceeding if MDLZ demonstrates it has complied with the requirements  
7 of Section 2. MDLZ is entitled to designate such information as confidential.

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

12     **12.     MODIFICATION**

13             **12.1     Modification.** This Consent Judgment may be modified only by: (i) a written  
14 agreement of the Parties and entry of a modified consent judgment thereon by the Court; or (ii) a  
15 successful motion or application of any Party, and the entry of a modified consent judgment thereon  
16 by the Court. Any modifications made to this Consent Judgment pursuant to this Paragraph 12 shall  
17 have no effect on the MDLZ's financial obligations under this Consent Judgment.

18             **12.2     Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
19 attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the  
20 Consent Judgment.

21             **12.3     Change in Proposition 65.** If Proposition 65 or its implementing regulations  
22 (including but not limited to the published "no significant risk level" for acrylamide set forth at Cal.  
23 Code Regs., tit. 27, section 25705, subdivision (c)(2) or any "alternative risk level" adopted by  
24 regulation or court decision) are changed from their terms as they exist on the date of entry of this  
25 Consent Judgment, or if OEHHA takes some other final regulatory action that determines that  
26 warnings for acrylamide are not required or modifies the standard for warnings for acrylamide, then  
27 MDLZ may seek to modify this Consent Judgment.  
28

1           **12.4 Other Court Decisions.** If a final decision of a court determines that warnings for  
2 acrylamide exposures or that enforcement of Proposition 65 claims for acrylamide exposures are  
3 preempted or otherwise unlawful or unconstitutional, then MDLZ may move to modify this Consent  
4 Judgment to conform to such ruling in order to avoid unfair, inconsistent, or anti-competitive results.

5           **12.5. Federal Agency Action and Preemption.** If a court of competent jurisdiction or an  
6 agency of the federal government, including, but not limited to, the U.S. Food and Drug  
7 Administration, states through any guidance, regulation or legally binding act that federal law has  
8 preemptive effect on any of the requirements of this Consent Judgment, then this Consent Judgment  
9 may be modified in accordance with the procedure for noticed motions set forth in Section 12.1 to bring  
10 it into compliance with or avoid conflict with federal law.

11           **12.6 Scientific Studies.** If an agency of the federal government, including, but not limited  
12 to the U.S. Food and Drug Administration, states through any guidance, regulation, or other legally  
13 binding act, following a review of scientific studies and following public notice and comment, a cancer  
14 potency estimate for acrylamide that equates to a no significant risk level higher than 0.2 micrograms  
15 per day, then MDLZ shall be entitled to seek a modification of this Consent Judgment.

16           **12.7** Before filing any motion to modify the Consent Judgment, MDLZ shall provide written  
17 notice to EHA to initiate the meet and confer procedure in Section 12.2. If the Parties do not agree on  
18 the proposed modification during informal meet and confer efforts, MDLZ may file a motion to modify  
19 the Consent Judgment within sixty (60) days of the date of the written notice that MDLZ provides to  
20 EHA under this Section 12.

21           **12.8** Any modifications made to this Consent Judgment pursuant to this Paragraph 12 shall  
22 have no effect on the MDLZ's financial obligations under this Consent Judgment.

23 **13. RETENTION OF JURISDICTION**

24 This Court shall retain jurisdiction of this matter to implement or modify the Consent  
25 Judgment. Notwithstanding the provisions of Section 12, nothing in this Consent Judgment limits or  
26 affects the Court's authority to modify this Consent Judgment as provided by law.  
27  
28

**12. 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.

**13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

**14. ENTIRE AGREEMENT**

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

**AGREED TO:**

Date: March 18, 2021.

By:   
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

**AGREED TO BY (DEFENDANT)**

Date: March 23, 2021

By:   
MONDELEZ GLOBAL, LLC