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

CALSAFE RESEARCH CENTER, INC., a
California non-profit corporation

Plaintiff,

v.

MARY'S GONE CRACKERS, INC, A
Delaware Corporation; and DOES 1 to 10,

Defendants.

Case No. 30-2021-01187926-CU-TT-CXC

STIPULATED CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

Assigned for all purposes to:
Hon. Glenda Sanders

Action Filed: March 5, 2021

1. INTRODUCTION

1.1 This Consent Judgment is entered into by and between CALSAFE RESEARCH
CENTER, INC., ("CRC") on the one hand, and MARY'S GONE CRACKERS, INC

("Defendant" or "MGC") on the other hand, with CRC and MGC each individually referred to as a "Party" and collectively referred to as the "Parties."

1.2 CRC is a non-profit corporation organized under the state of California, acting in the interest of the general public. It seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

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

General Allegations

1.4 CRC alleges that MGC manufactures, imports, sells, and distributes for sale Products that contain acrylamide. CRC further alleges that MGC does so without providing a sufficient health hazard warning as required by Proposition 65 and related Regulations. Pursuant to Proposition 65, acrylamide is listed as a chemical known to cause cancer and reproductive harm.

Notices of Violation

1.5 On October 29, 2020, CRC served MGC, Albertsons/Vons, the California Attorney General, and all other required public enforcement agencies with a 60-Day Notice of Violation of California Health and Safety Code section 25249.6 *et seq.* ("Notice"). The Notice alleged that MGC violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to acrylamide contained in its "Mary's Gone Crackers Inc., Herb Crackers". No public enforcer has commenced or is otherwise prosecuting an action to enforce the violations alleged in the Notice.

Product Description

1.6 For purposes of this Consent Judgment, the "Product," "Products," or "Covered Products" are defined as MGC's Herb Crackers that allegedly contain acrylamide and are

1 manufactured, imported, sold, or distributed for sale in California by Defendant and Releasees.

2
3 **Complaint**

4 **1.7** On March 5, 2021 CRC filed a Complaint against MGC for the alleged violations
5 of Health and Safety Code section 25249.6 that are the subject of the Notice ("Complaint").

6 **No Admission**

7 **1.8** MGC denies the material factual and legal allegations of the Notice and
8 Complaint and maintains that all of the products it has manufactured, imported, sold, and/or
9 distributed for sale in California, including Products, have been, and are, in compliance with all
10 laws. Nothing in this Consent Judgment shall be construed as an admission of any fact, finding,
11 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
12 Judgment be construed as an admission of any fact, finding, conclusion of law, issue of law, or
13 violation of law. This Section shall not, however, diminish or otherwise affect MGC's
14 obligations, responsibilities, and duties under this Consent Judgment.

15 **1.9** For purposes of this Consent Judgment and the Complaint only, CRC and
16 Defendant stipulate that this Court has jurisdiction over the allegations of violations contained
17 in the Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint,
18 that venue is proper in the County of Orange, and that this Court has jurisdiction to enter this
19 Consent Judgment as a full and final resolution of all claims which were or could have been
20 raised in the Complaint based on the facts alleged therein. The Parties further stipulate that the
21 Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to
22 Proposition 65 and Code of Civil Procedure section 664.6.

23 **Effective Date**

24 **1.10** For purposes of this Consent Judgment, the term "Effective Date" means the date
25 on which the Court grants the motion for approval of this Consent Judgment, as discussed in
26 Section 5. Since the reformulation described below must ensure compliance with applicable
27 regulatory requirements, the Compliance Date means the date six (6) months after the Effective
28 Date.

S.M.

1 **2. INJUNCTIVE RELIEF: ACRYLAMIDE REDUCTION**

2 **2.1 Reformulation of Product.** Any Products that are manufactured by MGC on and
3 after the Compliance Date that are thereafter sold in California or distributed for sale in
4 California shall not exceed 350 ppb acrylamide based on the testing program described in Section
5 2.2. As used in this Section 2.1, "distributed for sale in California" means to directly ship
6 Products into California or to sell Products to a distributor MGC knows will sell Products in
7 California.

8 **2.2 Testing**

- 9 a. Compliance with the reformulation level shall be determined using LC-MS/MS
10 (Liquid Chromatograph-Mass Spectrometry), GC/MS (Gas Chromatography/Mass
11 Spectrometry), or any other testing method agreed upon by the Parties. On the
12 Compliance Date, and continuing thereafter, MGC shall not manufacture Products that
13 will be sold or offered for sale in California that exceed 350 ppb, such concentration
14 to be determined by use of a test performed by a laboratory accredited by the State of
15 California, a federal agency, or a nationally recognized organization.
- 16 b. On the Compliance Date and again, six (6) months after the Compliance date, MGC
17 shall arrange for testing under Section 2.2, random testing of Three (3) lots of Products
18 (See Section 1.6, *Supra*). No further testing shall be required unless MGC materially
19 modifies the ingredients or cooking process of Products, at which point testing shall
20 recommence on an annual basis for at least three years.

21 **2.3 Clear and Reasonable Warnings.** For Products that contain acrylamide in a
22 concentration exceeding the ppb level set forth in Section 2.1 and as determined through testing
23 pursuant to Section 2.2 above, and which are manufactured and packaged for distribution for
24 authorized sale or use in California on or after the Compliance Date, MGC shall provide one of
25 the following Proposition 65 warnings:

- 26 i) **WARNING:** Consuming this product can expose you to chemicals
27 including Acrylamide, which is known to the State of California to
28 cause cancer and birth defects or other reproductive harm. For more
information go to www.P65Warnings.ca.gov/food.

1 ii) **WARNING: Cancer and Reproductive Harm -**
2 www.P65Warnings.ca.gov/food.

3 The Warning shall be securely affixed to or printed upon the package or label of each
4 Covered Product. Defendant must display the above Warning with such conspicuousness, as
5 compared with other words, statements or designs on the label or package, to render the Warning
6 likely to be read and understood by an ordinary individual under customary conditions of
7 purchase or use of the product.

8 Extra-Territorial Effect. Nothing in this Consent Judgment requires that warnings be
9 given for any Products that are not shipped for sale in California.

10 2.3.1 **California Chamber of Commerce v. Xavier Becerra Case No. 2:19-cv-**
11 **02019.** To the extent the implementation and/or enforcement of Proposition 65 is altered as a
12 result of the above referenced Cal. Chamber matter; MGC's duties and obligations under this
13 Consent Judgment may be modified to conform with any such ruling. Such modification(s) shall
14 not be subject to the requirements of the Modification Procedures outlined in Section 11 herein-
15 below.

16 2.4 **Sell-Through Period.** Notwithstanding anything else in this Consent Judgment,
17 the Products that are manufactured on or prior to the Compliance Date shall be subject to release
18 of liability pursuant to this Consent Judgment, without regard to when such Products were, or
19 are in the future, distributed or sold to customers. As a result, the obligation of MGC, or any
20 Releasees (if applicable), do not apply to these Products manufactured on or prior to the
21 Compliance Date.

22 **3. MONETARY SETTLEMENT TERMS**

23 3.1 **Settlement Amount.** MGC shall pay Forty-Six thousand Five-Hundred Dollars
24 (\$46,500) in settlement and total satisfaction of all the claims referred to in the Notice, the
25 Complaint, and this Consent Judgment. This includes civil penalties in the amount of Four-
26 Thousand Five-Hundred dollars (\$ 4,500) pursuant to Health and Safety Code section 25249.
27 7(b) and attorney's fees and costs in the amount of forty-two thousand dollars (\$ 42,000) pursuant
28 to Code of Civil Procedure section 1021.5.

1 **3.2 Civil Penalty.** The portion of the settlement attributable to civil penalties in the
2 amount of \$4,500, shall be allocated according to Health and Safety Code section 25249.12(c)(1)
3 and (d), with seventy-five percent (75%) of the penalty paid to the California Office of
4 Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent
5 (25%) of the penalty paid to CRC.

6 All payments owed to CRC shall be delivered to the following address: Manning Law
7 APC, Client Trust and CalSafe Research Center, Inc and associated with taxpayer identification
8 number 84-4419173. This payment shall be delivered to **Manning Law, APC, 20062 SW Birch**
9 **St. Suite 200, Newport Beach, CA 92660.**

10 The OEHHA portion of the civil penalty shall be made payable to OEHHA and
11 associated with taxpayer identification number 68-0284486. This payment shall be delivered as
12 follows:

13 For United States Postal Service Delivery:

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

19 For Non-United States Postal Service Delivery:

20 Attn: Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 1001 I Street, MS #19B
24 Sacramento, CA 95814

25 MGC agrees to provide CRC's counsel with a copy of the check payable to OEHHA,
26 simultaneous with its penalty payments to CRC. CRC and its counsel will provide completed
27 IRS 1099, W-9, or other tax forms as required. Relevant information is set out below:

- 28 • CalSafe Research Center, Inc, associated with taxpayer identification number 84-
4419173, CalSafe Research Center, Inc. 4533 MacArthur Blvd. Ste. 230, Newport Beach,
CA 92660.
- Manning Law, APC, associated with taxpayer identification number 83-0502205,
Manning Law, APC, 20062 SW Birch St. Suite 200, Newport Beach, CA 92660.

1 **3.3 Attorney's Fees and Costs.** The portion of the settlement attributable to
2 attorney's fees and costs (\$37,000) shall be paid to CRC's counsel, who are entitled to attorney's
3 fees and costs incurred by it in this action, including but not limited to investigating potential
4 violations, bringing this matter to MGC's attention, as well as litigating and negotiating a
5 settlement in the public interest.

6 MGC shall provide its payment to CRC's counsel in one check, payable to the Manning
7 Law, APC, and delivered to 20062 SW Birch St. Suite 200, Newport Beach, CA 92660, within
8 fourteen (14) days of the Effective Date.

9 **3.4 Additional Settlement Payment ("ASP").** \$3,850 as an Additional Settlement
10 Payment ("ASP") to CRC pursuant to Health & Safety Code § 25249.7(b), and California Code
11 of Regulations, Title 11, § 3204. CRC intends to restrict use of the ASPs received from this
12 Consent Judgment to the following purposes: the funds will be placed in CRC's Toxics in Food
13 Fund and used to support CRC programs and activities that seek to educate the public about
14 acrylamide and other toxic chemicals in food, to work with the food industry and agriculture
15 interests to reduce exposure to acrylamide and other toxic chemicals in food, and to thereby
16 reduce the public health impacts and risks of exposure to acrylamide and other toxic chemicals
17 in food sold in California. The payment pursuant to this Section shall be made payable to
18 Manning Law APC, Client Trust and CalSafe Research Center and associated with taxpayer
19 identification number 84-4419173. This payment shall be delivered to Manning Law, APC,
20 20062 SW Birch St. Suite 200, Newport Beach, CA 92660.

21 **3.5** \$1,150 shall be distributed to CRC as reimbursement to CRC for reasonable costs
22 for testing and bringing this action. This payment shall be made payable to Manning Law APC,
23 Client Trust and delivered to Manning Law, APC, 20062 SW Birch St. Suite 200, Newport
24 Beach, CA 92660.

25 **4. CLAIMS COVERED AND RELEASED**

26 **4.1 CRC's Release of Proposition 65 Claims.** CRC acting on its own behalf and in the
27 public interest releases MGC from all claims for violations of Proposition 65 up through the
28 Effective Date based on exposure to acrylamide from Covered Products as set forth in the Notice

1 of Violation. Compliance with the terms of this Consent Judgment constitutes compliance with
2 Proposition 65 with respect to exposures to acrylamide from Covered Products as set forth in the
3 Notice of Violation. This includes MGC's owners, parents, subsidiaries, affiliated entities under
4 common ownerships, its directors, officers, agents, employees, attorneys, and each entity to
5 whom MGC directly or indirectly distributes or sells Products, including but not limited to
6 downstream distributors, wholesales, customers, retailers (including Albertsons/Vons),
7 franchisees, cooperative members and licensees, (collectively, the "Releasees"). Releasees
8 include Defendant, its parent, and all subsidiaries and affiliates thereof and their respective
9 employees, agents, and assigns that sell MGC's Products. This Consent Judgment is a full, final
10 and binding resolution of all claims that were or could have been asserted against MGC and/or
11 Releasees for violations of Proposition 65 up through the Effective Date based on exposure to
12 acrylamide from Covered Products as set forth in the Notice of Violation. **4.2 CRC's**

13 **Individual Release of Claims.** CRC, in its individual and/or corporate capacity, also provides
14 a release to MGC and/or Releasees, which shall be a full and final accord and satisfaction of, as
15 well as a bar to, all actions, causes of action, obligations, costs, expenses, attorney's fees,
16 damages, losses, claims, liabilities, and demands of every nature, character, and kind, whether
17 known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to
18 acrylamide in Products manufactured, imported, sold, or distributed by MGC before the
19 Compliance Date.

20 **4.3 MGC's Release of CRC.** MGC, on its own behalf, and on behalf of Releasees as well
21 as its past and current agents, representatives, attorneys, successors, and assignees, hereby waives
22 any and all claims against CRC and its past, current and future agents, officers, board members,
23 shareholders, representatives, attorneys, successors, and assignees, as well as affiliates and other
24 representatives, for any and all actions taken or statements made by CRC and its attorneys and
25 other representatives, whether in the course of investigating claims, otherwise seeking to enforce
26 Proposition 65 against it, in this matter or with respect to the Products. *S.M.*

27 **5. COURT APPROVAL**

28 This Consent Judgment is not effective until it is approved by the Court and shall be null

1 and void if it is not approved by the Court within one year after it has been fully executed by the
2 Parties, or by such additional time as the Parties may agree to in writing.

3 This Consent Judgment shall be submitted to the Court for entry by noticed motion If
4 this Consent Judgment is not approved by the Court, it shall be of no force or effect and may not
5 be used by CRC or Defendant for any purpose.

6 **6. SEVERABILITY**

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

11 **7. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the state of
13 California as applied within the state of California. In the event that Proposition 65 is
14 repealed, or is otherwise rendered inapplicable for reasons, including but not limited to
15 changes in the law, then MGC may provide written notice to CRC of any asserted change,
16 and shall have no further injunctive obligations pursuant to this Consent Judgment with
17 respect to, and to the extent that, the Products are so affected.

18 **8. PROVISION OF NOTICE**

19 When any Party is entitled to receive any notice under this consent Judgment, the notice
20 shall be sent by first class mail or electronic mail and address set forth in this Paragraph. Any
21 Party may modify the person and address to whom the notice is to be sent by sending the other
22 Party notice by certified mail, return receipt requested. Said change shall take effect on the date
23 the return receipt is signed by the Party receiving the change.

24 **12.2** Notices shall be sent to:

25 For CRC

26 Joseph R. Manning, Jr.
27 Manning Law, APC
28 20062 SW Birch St. Suite 200
Newport Beach, CA 92660

For MGC

Robert (Bob) Niemann
Keller and Heckman, LLP
Three Embarcadero Center, STE 1420
San Francisco, CA 94111

S.M.

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

9. COUNTERPARTS; DIGITAL 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.

Each signatory to the Parties' stipulation for entry of this Consent Judgment has certified that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment, to enter into and execute the stipulation on behalf of the Party represented, and legally to bind that Party.

10. POST EXECUTION ACTIVITIES

CRC 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 CRC 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.

11. MODIFICATION OF CONSENT JUDGMENT

11.1 Procedure for Modification. This Consent Judgment may be modified by written agreement of CRC and Defendant, after noticed motion, and upon entry of a modified consent judgment by the Court thereon, or upon motion of CRC or Defendant as provided herein or as otherwise provided by Law, and upon entry of a modified consent judgment by the Court. Before filing an application with the Court for a modification to this Consent Judgment, Defendant shall meet and confer with the CRC to determine whether the CRC will consent to

1 the proposed modification. If a proposed modification is agreed upon, then Defendant and CRC
2 will present the modification to the Court by means of a stipulated modification to the Consent
3 Judgment. Otherwise, Defendant shall bear the burden of establishing that the modification is
4 appropriate based on the occurrence of a condition set forth in this Consent Judgment or as
5 otherwise provided by law.

6 **11.2 Change in Proposition 65.** If Proposition 65 or its implementing regulations are
7 changed from their terms as they exist on the date of entry of this Consent Judgment, either Party
8 or both Parties may seek modification of the Consent Judgment through stipulated or noticed
9 motion as follows:

10 **11.2.1** If the change establishes that warnings for acrylamide in Covered Products are
11 not required, Settling Defendant may seek a modification of this Consent
12 Judgment to eliminate its duties to warn and/or its duty to reduce acrylamide
13 levels.

14 **11.2.2** If the change establishes that the warnings provided by this Consent Judgment
15 would not comply with Proposition 65 or its implementing regulations, either
16 Party may seek a modification of the consent Judgment to conform the judgment
17 to the change in law.

18 **11.2.3** If the change establishes by regulation an acrylamide concentration level for Herb
19 Cracker products, that is higher than the Target Level set in this Consent
20 Judgment, MGC may receive the benefit of that higher concentration level for its
21 Covered Products. In such instance, MGC shall provide 60 days' written notice
22 to CRC.

23 **12. AUTHORIZATION**

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

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

27 If a dispute arises with respect to either Party's compliance with the terms of this Consent
28 Judgement entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or in

the absence of such a good faith attempt to resolve the dispute beforehand.

14. ENFORCEMENT

CRC may, by motion or application for an order to show cause before this Court, enforce the terms and conditions contained in this Consent Judgment. In any such proceeding, CRC may seek recovery of reasonable costs, fees and/or remedies for failure to comply with the Consent Judgment,

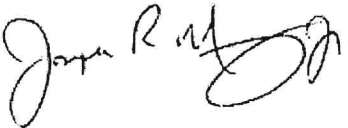
15. ENTIRE AGREEMENT

15.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

15.2. The Consent Judgment is the result of mutual drafting and no ambiguity found herein shall be construed in favor of or against any Party.

APPROVED AS TO FORM:

Date: November 16, 2021

By: 

Joseph R. Manning Jr.
Counsel for Plaintiff

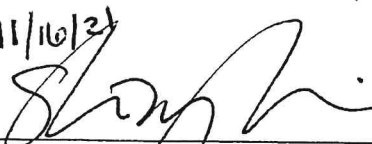
APPROVED AS TO FORM:

Date: November 19, 2021

By: 

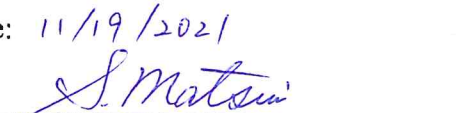
Robert (Bob) Niemann
Counsel for Defendant

AGREED TO:
CALSAFE RESEARCH CENTER, INC

Date: 11/16/21
By: 

Title: CEO

AGREED TO:
MARY'S GONE CRACKERS, INC.

Date: 11/19/2021
By: 
Shuji (Sergio) Matsui
Title: CEO

1 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

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3 Dated:

4 _____
5 Hon. Glenda Sanders
6 Judge of the Superior Court
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