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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



1 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.

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](http://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)(l)  
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. *J.M.*

25 **4. CLAIMS COVERED AND RELEASED**

26       **4.1 CRC's Public Release of Proposition 65 Claims.** For any claim or violation  
27 arising under Proposition 65 alleging a failure to warn about exposures to acrylamide from  
28 Products or related products manufactured, imported, sold, or distributed by MGC prior to the

1 Compliance Date, CRC, acting for the general public, releases MGC of any and all liability. This  
2 includes MGC's owners, parents, subsidiaries, affiliated entities under common ownerships, its  
3 directors, officers, agents, employees, attorneys, and each entity to whom MGC directly or  
4 indirectly distributes or sells Products, including but not limited to downstream distributors,  
5 wholesales, customers, retailers (including Albertsons/Vons), franchisees, cooperative members  
6 and licensees, (collectively, the "Releasees"). Releasees include Defendant, its parent, and all  
7 subsidiaries and affiliates thereof and their respective employees, agents, and assigns that sell  
8 MGC's Products. Compliance with the terms of this Consent Judgement constitutes compliances  
9 with Proposition 65 with respect to the alleged or actual failure to warn about exposures to  
10 acrylamide from Products manufactured, imported, sold, or distributed by MGC after the  
11 Effective Date. This Consent Judgement is a full, final and binding resolution of all claims that  
12 were or could have been asserted against MGC and/or Releasees for failure to provide warnings  
13 for alleged exposure to acrylamide contained in Products.

14 **4.2 CRC's Individual Release of Claims.** CRC, in its individual and/or corporate  
15 capacity, also provides a release to MGC and/or Releasees, which shall be a full and final accord  
16 and satisfaction of, as well as a bar to, all actions, causes of action, obligations, costs, expenses,  
17 attorney's fees, damages, losses, claims, liabilities, and demands of every nature, character, and  
18 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual  
19 exposures to acrylamide in Products manufactured, imported, sold, or distributed by MGC before  
20 the Compliance Date.

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

2 This Consent Judgment is not effective until it is approved by the Court and shall be null  
3 and void if it is not approved by the Court within one year after it has been fully executed by the  
4 Parties, or by such additional time as the Parties may agree to in writing.

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

8 **6. SEVERABILITY**

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

13 **7. GOVERNING LAW**

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

20 **8. PROVISION OF NOTICE**

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

1           **12.2** Notices shall be sent to:

2       **For CRC**

3       Joseph R. Manning, Jr.  
4       Manning Law, APC  
5       20062 SW Birch St. Suite 200  
6       Newport Beach, CA 92660

7       **For MGC**

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

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

14      **9. COUNTERPARTS; DIGITAL SIGNATURES**

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

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

22      **10. POST EXECUTION ACTIVITIES**

23           CRC 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  
25      Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the  
26      settlement, which motion CRC shall draft and file. In furtherance of obtaining such approval, the  
27      Parties agree to mutually employ their best efforts, including those of their counsel, to support  
28      the entry of this agreement as judgment, and to obtain judicial approval of their settlement in a  
29      timely manner. For purposes of this Section, "best efforts" shall include, at a minimum,  
30      supporting the motion for approval, responding to any objection that any third-party may make,  
31      and appearing at the hearing before the Court if so requested.

32      **11. MODIFICATION OF CONSENT JUDGMENT**

33           **11.1 Procedure for Modification.** This Consent Judgment may be modified by  
34      written agreement of CRC and Defendant, after noticed motion, and upon entry of a modified

1 consent judgment by the Court thereon, or upon motion of CRC or Defendant as provided herein  
2 or as otherwise provided by Law, and upon entry of a modified consent judgment by the Court.  
3 Before filing an application with the Court for a modification to this Consent Judgment,  
4 Defendant shall meet and confer with the CRC to determine whether the CRC will consent to  
5 the proposed modification. If a proposed modification is agreed upon, then Defendant and CRC  
6 will present the modification to the Court by means of a stipulated modification to the Consent  
7 Judgment. Otherwise, Defendant shall bear the burden of establishing that the modification is  
8 appropriate based on the occurrence of a condition set forth in this Consent Judgment or as  
9 otherwise provided by law.

10 **11.2 Change in Proposition 65.** If Proposition 65 or its implementing regulations are  
11 changed from their terms as they exist on the date of entry of this Consent Judgment, either Party  
12 or both Parties may seek modification of the Consent Judgment through stipulated or noticed  
13 motion as follows:

14 **11.2.1** If the change establishes that warnings for acrylamide in Covered Products are  
15 not required, Settling Defendant may seek a modification of this Consent  
16 Judgment to eliminate its duties to warn and/or its duty to reduce acrylamide  
17 levels.

18 **11.2.2** If the change establishes that the warnings provided by this Consent Judgment  
19 would not comply with Proposition 65 or its implementing regulations, either  
20 Party may seek a modification of the consent Judgment to conform the judgment  
21 to the change in law.

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

*S.M.*

1 **12. AUTHORIZATION**

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

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

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

9 **14. ENFORCEMENT**

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

14 **15. ENTIRE AGREEMENT**

15 **15.1** This Consent Judgment contains the sole and entire agreement and understanding  
16 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
17 negotiations, commitments and understandings related hereto. No representations, oral or  
18 otherwise, express or implied, other than those contained herein have been made by any Party  
19 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
20 to exist or to bind any of the Parties.

21 **15.2.** The Consent Judgment is the result of mutual drafting and no ambiguity found  
22 herein shall be construed in favor of or against any Party.

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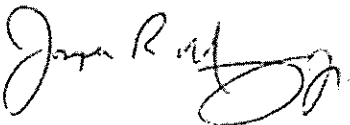
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*S.M.*

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2 APPROVED AS TO FORM:


3 Date: August 9, 2021

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5 By: \_\_\_\_\_  
6 Joseph R. Manning Jr.  
7 Counsel for Plaintiff

APPROVED AS TO FORM:

Date: August 9, 2021

By: 

By: \_\_\_\_\_  
Robert (Bob) Niemann  
Counsel for Defendant

8 AGREED TO:

CALSAFE RESEARCH CENTER, INC

9 Date:

10 By: 

11 ERIC FAIRON  
12 Title: President

AGREED TO:

MARY'S GONE CRACKERS, INC.

Date: August 16, 2021

By: 

Shuji (Sergio) Matsui  
Title: CEO

13 IT IS SO ORDERED, ADJUDGED, AND DECREED.

14 Dated:

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16 \_\_\_\_\_  
17 Hon. Glenda Sanders  
18 Judge of the Superior Court  
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