

FILED
LOS ANGELES SUPERIOR COURT

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JUL 22 2008
JOHN A. CLARKE, CLERK

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FILED
LOS ANGELES SUPERIOR COURT
JUL 22 2008
JOHN A. CLARKE, CLERK
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BY MARIA C. CONCEPCION, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

18 PEOPLE OF THE STATE OF CALIFORNIA,
19 ex rel. EDMUND G. BROWN JR., Attorney
20 General of the State of California,,

Plaintiff,

v.

23 FRITO-LAY, INC., et al.,

24 Defendants.

Case No.: BC 338956

~~FRITO-LAY~~
CONSENT JUDGMENT AS TO
DEFENDANT H.J. HEINZ
COMPANY, L.P.

Dept: 32
Judge: Hon. William F. Highberger
Trial Date: July 28, 2008
Action Filed: August 26, 2005

26 1. INTRODUCTION

27 1.1. On August 26, 2005, the People of the State of California ("People"), filed a
28

1 complaint for civil penalties and injunctive relief for violations of Proposition 65 and
2 unlawful business practices in the Superior Court for the County of Los Angeles. The
3 People's Complaint alleges that the Defendants failed to provide clear and reasonable
4 warnings that ingestion of the products mentioned in the Complaint (the "Products"), would
5 result in exposure to acrylamide, a chemical known to the State of California to cause
6 cancer. The Complaint further alleges that under the Safe Drinking Water and Toxic
7 Enforcement Act of 1986, Health and Safety Code section 25249.6, also known as
8 "Proposition 65," businesses must provide persons with a "clear and reasonable warning"
9 before exposing individuals to these chemicals, and that the Defendants failed to do so. The
10 Complaint also alleges that these acts constitute unlawful acts in violation of the Unfair
11 Competition Law, pursuant to Business and Professions Code sections 17200 etseq.

12 1.2. H.J. Heinz Company L.P. ("Settling Defendant") is among the defendants
13 named in the complaint.

14 1.3. Settling Defendant is a Delaware Limited Partnership that employs more than
15 10 persons, and has employed ten or more persons at some time relevant to the allegations
16 of the complaint, and that manufactures, distributes and/or sells Products in the State of
17 California and has done so in the past.

18 1.4. The Products included in this Consent Judgment are those Settling
19 Defendant's Products that are described in Exhibit A (i) as frozen french fry products and
20 such other new frozen french fry products sold by Heinz in the future with the primary
21 preparation method as baking (collectively, "Frozen French Fry Products"), (ii) frozen tater
22 tot products and such other new tater tot products sold by Heinz in the future (collectively,
23 "Frozen Tater Tot Products") and (iii) Other Frozen Potato Products. The Frozen French
24 Fry Products and Frozen Tater Tot Products are collectively referred to herein as Covered
25 Fry Products.

26 1.5. For purposes of this Consent Judgment only, the People and the Settling
27 Defendant stipulate that this Court has jurisdiction over the allegations of violations
28 contained in the People's Complaint and personal jurisdiction over Settling Defendant as to

1 the acts alleged in the People's Complaint, that venue is proper in the County of Los
2 Angeles, and that this Court has jurisdiction to enter this Consent Judgment as a full and
3 final resolution of all claims which were or could have been raised in the Complaint based
4 on the facts alleged therein.

5 1.6. The People and Settling Defendant enter into this Consent Judgment as a full
6 and final settlement of all claims that were raised in the Complaint (except as specified in
7 Paragraph 8.1 herein), arising out of the facts or conduct alleged therein. By execution of
8 this Consent Judgment and agreeing to provide the relief and remedies specified herein,
9 Settling Defendant does not admit any violations of Proposition 65 or Business and
10 Professions Code sections 17200 et seq., or any other law or legal duty. Except as expressly
11 set forth herein, nothing in this Consent Judgment shall prejudice, waive or impair any
12 right, remedy, or defense the Attorney General and Settling Defendant may have in any
13 other or in future legal proceedings unrelated to these proceedings. However, this paragraph
14 shall not diminish or otherwise affect the obligations, responsibilities, and duties of the
15 parties under this Consent Judgment.

16 1.7. The Effective Date of this Consent Judgment shall be the date on which the
17 Consent Judgment is entered as a judgment by the trial Court.

18 2. INJUNCTIVE RELIEF: ACRYLAMIDE REDUCTION

19 2.1. Target Level and Target Date. Settling Defendant shall reduce the level of
20 acrylamide in the Covered Fry Products shipped after November 30, 2011 for sale in
21 California to the following levels pursuant to the protocol described in Paragraph 2.3 below
22 or be subject to the provisions of Section 3 below.

23 (a) 315 ppb weighted arithmetic mean for all Covered French Fry Products shipped
24 after November 30, 2011 without warning pursuant to Section 3 below.

25 (b) 315 ppb weighted arithmetic mean for all Covered Tater Tot Products shipped
26 after November 30, 2011 without warning pursuant to Section 3 below.

27 (c) 500 ppb maximum arithmetic mean for each of the Covered Fry Product shipped
28 after November 30, 2011 without warning pursuant to Section 3 below.

1 Settling Defendant shall continue its program of research, development, and
2 implementation of technologies and methods intended to reduce the presence of acrylamide
3 in the Covered Fry Products shipped for sale in California. Settling Defendant shall
4 endeavor, in good faith using all commercially and technologically reasonable efforts, to
5 achieve the above described levels in Covered Fry Products shipped for sale in California
6 by the Target Date.

7 2.2. "Shipped for sale in California" means Covered Fry Products that Settling
8 Defendant either directly ships into California for sale in California or that it sells to a
9 distributor who Settling Defendant knows will sell the Covered Fry Products in California.
10 Where a retailer or distributor sells products both in California and other states, Settling
11 Defendant shall take all commercially reasonable steps to ensure that after the Target Levels
12 have been reached, only Covered Fry Products that meet those levels are sold in California
13 absent Settling Defendant's compliance with Section 3 below.

14 2.3. Standard and Verification.

15 (a) Testing for acrylamide shall be performed using either GC/MS (Gas
16 Chromatograph/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass
17 Spectrometry) or any other testing method agreed upon by the parties.

18 (b) Sampling methodology shall be as described in Exhibit B or as otherwise
19 agreed upon by the parties.

20 (c) The weighted arithmetic mean is to be calculated by the following formula:
21 Multiply the arithmetic mean of the acrylamide concentration of each product (established
22 by the sampling methodology) by that product's fraction of total sales volume for all
23 products to be included in the weighted arithmetic mean, and thereafter sum all such
24 adjusted concentrations for all products that are required to be included in the weighted
25 arithmetic mean. Sales volume for each product and for total sales volume shall be based
26 upon 52 week Nielson data for metropolitan areas Los Angeles, San Francisco, San Diego
27 and Sacramento available to Settling Defendant by September 1, 2011 and each anniversary
28 of that date.

1 (d) All test results of acrylamide concentrations, once provided to the Attorney
2 General, shall be public documents. Notwithstanding, nothing in this Consent Judgment
3 precludes Settling Defendant from claiming business confidentiality as to sales volumes of
4 products sold in California.

5 (e) If Settling Defendant's test results demonstrate that the Target Level has been
6 achieved for the Covered Fry Products, Settling Defendant shall be required to test the
7 Covered Fry Products annually on two additional occasions only: between three and four
8 years of the Effective Date, and between four and five years of the Effective Date. If those
9 tests confirm that the Target Level has been achieved for the Covered Fry Products,
10 Settling Defendant shall have no further duty to test the Covered Fry Products, although the
11 Attorney General may apply to the Court for enforcement of the judgment based on results
12 of his own testing showing that the Target Level has not been achieved.

13 (f) If Settling Defendant has not achieved the Target Level for the Covered Fry
14 Products by the Target Date, it shall provide warnings for the Covered Fry Products as
15 provided herein in Section 3. Settling Defendant may also continue annual testing of the
16 Covered Fry Products until tests demonstrate that the Target Level has been achieved for
17 the Covered Fry Products, at which time Settling Defendant shall have no further duty to
18 warn, although the Attorney General may apply to the Court for enforcement of the
19 judgment based on results of his own testing showing that the Target Level has not been
20 achieved.

21
22 **3. INJUNCTIVE RELIEF: CLEAR AND REASONABLE WARNINGS**

23 If Settling Defendant does not achieve the Target Levels by the Target Date, Settling
24 Defendant shall within 30 days and until it achieves the Target Levels provide warnings as
25 follows:

26 (a) by placing a warning label as described in Paragraph 3.1 on the package of
27 (i) each Covered Fry Product for which the maximum Target Level under 2.1(c) has
28 not been achieved that is shipped for sale in California; and (ii) all Covered Fry Products

1 which Settling Defendant would be required to exclude from the calculation of the weighted
2 arithmetic mean to achieve the Target Level for the weighted arithmetic mean, or, at
3 Settling Defendant's option,

4 (b) by providing signs as described in Paragraph 3.2.

5 3.1 Label Warnings.

6 3.1(a) Form of Label Warning. A label warning placed on the package of a
7 Covered Product pursuant to Paragraph 3(a) shall provide substantially the same
8 information as set forth for sign warnings in Paragraph 3.2(b).

9 3.2. Sign Warnings.

10 3.2.(a) Form of Sign. A warning sign shall be rectangular and at least 36
11 square inches, with the word "WARNING" centered one-half of an inch from the top of the
12 sign in ITC Garamond bold condensed type face all in one-half inch capital letters. The
13 body of the warning message shall be in ITC Garamond bold condensed type face. For the
14 body of the warning message, left and right margins of at least one-half of an inch, and a
15 bottom margin of at least one-half inch shall be observed. Larger signs shall bear
16 substantially the same proportions of type size and spacing to sign dimension as the sign 36
17 square inches.

18 (b) Text of Sign. The sign shall contain the following text, unless modified
19 by agreement of the parties:

20 WARNING

21 WARNING: Browned potatoes contain acrylamide, a chemical
22 identified under California's Proposition 65 as causing cancer.
23 It is not added to the potato but is formed from cooking. The
24 U.S. FDA encourages people to continue to eat a wide variety
of foods and has not advised people to stop eating baked or
fried potatoes. For more information see www.fda.gov.

25 (c) Placement of Sign. The sign shall be posted on the shelves) or in the
26 aisle(s) where such Covered Fry Products are sold; unless the store has less than 7500
27 square feet of retail space and no more than two cash registers, in which case it may be
28 placed at each cash register. In addition, if the store operates a customer service desk or

1 similar central facility, the sign shall also be posted at that location.

2 (d) Distribution. Settling Defendant (or its agent) shall provide signs to
3 retailers in California who are collectively responsible for at least 80 percent of such
4 Settling Defendant's sales of Covered Fry Products in the State of California for which the
5 Target Level has not been achieved on the Target Date. Signs shall be provided with a letter
6 substantially as provided in Exhibit C, in which posting instructions are provided. The letter
7 shall request that the receiving retailer provide Settling Defendant a written
8 acknowledgement that the sign will be posted. Settling Defendant shall send a follow up
9 letter substantially as provided in Exhibit D to any retailer in California who does not send
10 any acknowledgement. Settling Defendant (or its agent) shall maintain files demonstrating
11 compliance with this provision, including the letters sent and receipts of any
12 acknowledgements from retailers, which shall be provided to the Attorney General on
13 written request.

14 3.3. Nothing in this Consent Judgment requires that warnings be given for
15 Covered Fry Products sold outside the State of California.

16 3.4. If Settling Defendant has demonstrated by testing that they have achieved the
17 Target Levels after providing warnings under Paragraph 3, the Settling Defendant may
18 cease providing warnings.

19 **4. OTHER PAYMENTS**

20 4.1. Settling Defendant shall also pay a civil penalty to the Attorney General
21 pursuant to Health & Safety Code section 25249.12 of \$500,000 no later than 30 days after
22 the Effective Date.

23 4.2 Within 30 days of the Effective Date, Settling Defendant shall pay \$100,000 to
24 be used by the Attorney General for the enforcement of Proposition 65. Funds paid pursuant
25 to this paragraph shall be placed in an interest-bearing Special Deposit Fund established by
26 the Attorney General. These funds, including any interest, shall be used by the Attorney
27 General, until all funds are exhausted, for the costs and expenses associated with the
28 enforcement and implementation of Proposition 65, including investigations, enforcement

1 actions, other litigation or activities as determined by the Attorney General to be reasonably
2 necessary to carry out his duties and authority under Proposition 65. Such funding may be
3 used for the costs of the Attorney General's investigation, filing fees and other court costs,
4 payment to expert witnesses and technical consultants, purchase of equipment, travel,
5 purchase of written materials, laboratory testing, sample collection, or any other cost
6 associated with the Attorney General's duties or authority under Proposition 65. Funding
7 placed in the Special Deposit Fund pursuant to this paragraph, and any interest derived
8 therefrom, shall solely and exclusively augment the budget of the Attorney General's Office
9 and in no manner shall supplant or cause any reduction of any portion of the Attorney
10 General's budget.

11 4.3. Each payment required by this Consent Judgment shall be made through the
12 delivery of separate checks payable to "California Department of Justice," to the attention
13 of Edward G. Weil, Supervising Deputy Attorney General, Department of Justice, 1515
14 Clay Street, 20th Floor, Oakland, CA 94612.

15 **5. OTHER FROZEN FOOD PRODUCTS**

16 5.1. Settling Defendant shall undertake testing of each of the Other Frozen Potato
17 Products pursuant to the sampling protocol described in Exhibit B, modified to reflect the
18 primary cooking method for the product if baking is not the primary cooking method. The
19 testing shall be undertaken within 6 months of the Effective Date. The results of such
20 testing shall be made available to the Attorney General at the conclusion of the testing
21 period. The Parties shall negotiate in good faith for a period of 90 days, which period may
22 be extended by a writing between the Parties, as to whether this Consent Judgment shall be
23 modified to establish Target Levels applicable to any or all of the Other Frozen Potato
24 Products. As to any product for which agreement is reached, the parties will submit a
25 stipulation to the Court modifying the Consent Judgment as provided in Section 6 below.
26 Except to the extent that the parties stipulate and the Court thereafter modifies this Consent
27 Judgment to so provide, the obligations of this Consent Judgment applicable to Covered
28 Fry Products do not apply to such Other Frozen Potato Products.

1 **6. MODIFICATION OF CONSENT JUDGMENT**

2 6.1. This Consent Judgment may be modified by written agreement of the
3 Attorney General and Settling Defendant, after noticed motion, and upon entry of a
4 modified consent judgment by the Court thereon, or upon motion of the Attorney General or
5 Settling Defendant as provided by law and upon entry of a modified consent judgment by
6 the Court. Before filing an application with the Court for a modification to this Consent
7 Judgment, Settling Defendant shall meet and confer with the Attorney General to determine
8 whether the Attorney General will consent to the proposed modification. If a proposed
9 modification is agreed upon, then Settling Defendant and the Attorney General will present
10 the modification to the Court by means of a stipulated modification to the Consent
11 Judgment.

12 6.2. If the Attorney General subsequently agrees in a settlement or judicially
13 entered consent judgment that some or all of the Covered Fry Products (as sold by other
14 companies) do not require a warning under Proposition 65 (based on the presence of
15 acrylamide), or if a court of competent jurisdiction renders a final judgment, and the
16 judgment becomes final, that some or all Products (as sold by other companies) do not
17 require a warning for acrylamide under Proposition 65, then Settling Defendant may seek a
18 modification of this Consent Judgment to eliminate the duty to warn under section 3 of this
19 Consent Judgment.

20 6.3. If Proposition 65 or its implementing regulations are changed from their terms
21 as they exist on the date of entry of this Consent Judgment to establish that warnings for
22 acrylamide in the Products are not required, Settling Defendant may seek a modification of
23 this Consent Judgment to relieve them of the duty to warn under section 3 of this Consent
24 Judgment.

25 6.4. If an agency of the federal government, including, but not limited to the U.S.
26 Food and Drug Administration, states through any communication, regulation, or legally
27 binding act, that federal law precludes Settling Defendant from providing any of the
28 warnings set forth in this Consent Judgment or the manner in which the warnings are given,

1 Settling Defendant may seek to modify this Consent Judgment to bring the warnings under
2 this Consent Judgment into compliance with federal law, but the modification shall not be
3 granted unless this Court concludes, in a final judgment or order, that federal law precludes
4 Settling Defendant from providing the warnings set forth in this Consent Judgment. A
5 determination that the provision of some, but not all, forms of warning described in section
6 3 above is not permitted shall not relieve Settling Defendant of the duty to provide one of
7 the other warnings described under this judgment for which such determination has not
8 been made.

9 6.5. If Proposition 65 or its implementing regulations are changed from their terms
10 as they exist on the date of entry of judgment, the parties may seek modifications in the
11 Consent Judgment as follows:

12 (a) If the change establishes that warnings for acrylamide in the Covered
13 Fry Products are not required, Settling Defendant may seek a modification of this Consent
14 Judgment to relieve it of the duty to warn.

15 (b) If the change establishes that the warnings provided by this Consent
16 Judgment would not comply with the law, either party may seek a modification of the
17 Consent Judgment to conform the judgment to the change in law.

18 (c) If the change would provide a new form or manner of an optional or
19 safe-harbor warning, Settling Defendant may seek a modification to provide a warning in
20 the newly permitted form, but the modification shall not be granted unless the Court finds
21 that the new warning would not be materially less informative or likely to be seen, read, and
22 understood than the warnings provided under this Consent Judgment.

23 6.6. If Settling Defendant corresponds in writing to an agency or branch of the
24 United States Government in connection with the application of Proposition 65 to
25 acrylamide in fried or baked potato products on or before November 30, 2011, then, so long
26 as such correspondence is not confidential and would be retrievable by the Attorney
27 General under the Freedom of Information Act, Settling Defendant originating such
28 communication shall provide the Attorney General with a copy of such communication as

1 soon as practicable, but not more than 10 days after sending or receiving the
2 correspondence; provided, however, that this section shall not apply to correspondence to or
3 from trade associations or other groups of which the Settling Defendant is a member.

4 **7. ENFORCEMENT**

5 7.1. The People may, by motion or application for an order to show cause before
6 this Court, enforce the terms and conditions contained in this Consent Judgment. In any
7 such proceeding, the People may seek whatever fines, costs, penalties, or remedies are
8 provided by law for failure to comply with the Consent Judgment and where said violations
9 of this Consent Judgment constitute subsequent violations of Proposition 65 or other laws
10 independent of the Consent Judgment and/or those alleged in the Complaint, the People are
11 not limited to enforcement of the Consent Judgment, but may seek in another action
12 whatever fines, costs, penalties, or remedies are provided for by law for failure to comply
13 with Proposition 65 or other laws. In any action brought by the People alleging subsequent
14 violations of Proposition 65 or other laws, Settling Defendant may assert any and all
15 defenses that are available.

16 **8. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

17 8.1. Each signatory to this Consent Judgment certifies that he or she is fully
18 authorized by the party he or she represents to stipulate to this Consent Judgment and to
19 enter into and execute the Consent Judgment on behalf of the party represented and legally
20 to bind that party.

21 **9. CLAIMS COVERED**

22 9.1. This Consent Judgment is a full, final, and binding resolution between the
23 People and Settling Defendant, of any violation of Proposition 65, Business & Professions
24 Code : sections 17200 et seq., or any other statutory or common law claims that have been
25 or could have been asserted in the Complaint against Settling Defendant for failure to
26 provide clear and reasonable warnings of exposure to acrylamide from the consumption of
27 the Covered Fry Products, or any other claim based on the facts or conduct alleged in the
28 Complaint as to such products, whether based on actions committed by Settling Defendant

1 or by any entity to whom they distribute or sell Covered Fry Products, or any entity that
2 sells the covered products to consumers except for sales of Covered Fry Products by
3 retailers during any period in which such retailers have not posted signs sent to them
4 pursuant to section 3.2(d). With this one exception, as to Covered Fry Products, compliance
5 with the terms of this Consent Judgment resolves any issue now, in the past, and in the
6 future concerning compliance by Settling Defendant, its parents, shareholders, divisions,
7 subdivisions, subsidiaries, sister companies, affiliates, franchisees, cooperative members,
8 and licensees, their distributors, wholesalers, and retailers who sell Covered Fry Products;
9 and the predecessors, successors, and assigns of any of them, with the requirements of
10 Proposition 65,

11 9.2 This Consent Judgment is a binding resolution between the People and
12 Settling Defendant, of any violation of Proposition 65, Business & Professions Code :
13 sections 17200 et seq>, or any other statutory or common law claims that have been or
14 could have been asserted in the Complaint against Settling Defendant for failure to provide
15 clear and reasonable warnings of exposure to acrylamide from the consumption of the Other
16 Frozen Potato Products, or any other claim based on the facts or conduct alleged in the
17 Complaint as to such products, whether based on actions committed by Settling Defendant
18 or by any entity to whom they distribute or sell Other Frozen Potato Products, or any entity
19 that sells the products to consumers for any period up to and including the sampling and
20 negotiation period pursuant to Section 5 above. In the event that the Parties submit a
21 stipulation to the Court pursuant to Section 5 above, such period shall extend until (i) a final
22 order is issued by the Court or (ii) 30 days after the Court denies the stipulation for
23 modification. Compliance with the terms of this Consent Judgment as to Other Frozen
24 Potato Products resolves any issue now, in the past, and in the future concerning compliance
25 by Settling Defendant, its parents, shareholders, divisions, subdivisions, subsidiaries, sister
26 companies, affiliates, franchisees, cooperative members, and licensees; their distributors,
27 wholesalers, and retailers who sell Other Frozen Potato Products; and the predecessors,
28 successors, and assigns of any of them, with the requirements of Proposition 65, except for

1 such product shipped after the termination date of the period described above.

2 **10. RETENTION OF JURISDICTION**

3 10.1. This Court shall retain jurisdiction of this matter to implement the Consent
4 Judgment.

5 **11. PROVISION OF NOTICE**

6 11.1. When any party is entitled to receive any notice under this Consent Judgment,
7 the notice shall be sent by overnight courier service to the person and address set forth in
8 this Paragraph. Any party may modify the person and address to whom the notice is to be
9 sent by sending each other party notice by certified mail, return receipt requested. Said
10 change shall take effect for any notice mailed at least five days after the date the return
11 receipt is signed by the party receiving the change.

12 11.2. Notices shall be sent by First Class Mail and/or overnight delivery to the
13 following when required:

14 For the Attorney General:

15 Edward G. Weil, Supervising Deputy Attorney General
16 1515 Clay Street, 20th Floor
Oakland, CA 94612

17 For H.J. Heinz Company L.P.:

18
19 Attn: Executive Vice President and General Counsel
20 H.J. Heinz Company LLP
21 1 PPG Place, Suite 3100
Pittsburgh, PA 15222

22 Nancy Cohen
23 Heller Ehrman LLP
24 333 South Hope Street, 39th Floor
Los Angeles, CA 90071

25
26 **12. COURT APPROVAL**

27 12.1. This Consent Judgment shall be submitted to the Court for entry by noticed
28 motion. If this Consent Judgment is not approved by the Court, it shall be of no force or

1 effect and may not be used by the Attorney General or Settling Defendant for any purpose.

2 **13. ENTIRE AGREEMENT**

3 13.1. This Consent Judgment contains the sole and entire agreement and
4 understanding of the Parties with respect to the entire subject matter hereof, and any and all
5 prior discussions, negotiations, commitments and understandings related hereto. No
6 representations, oral or otherwise, express or implied, other than those contained herein
7 have been made by any party hereto. No other agreements not specifically referred to
8 herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

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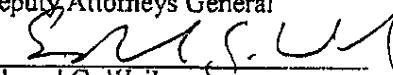
1 14. EXECUTION IN COUNTERPARTS

2 14.1 The stipulations to this Consent Judgment maybe executed in counterparts and
3 by means of facsimile, which taken together shall be deemed to constitute one document

4 IT IS SO STIPULATED:

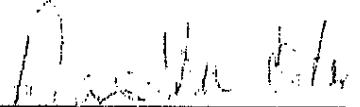
5 Dated: 7/18/08

6 EDMUND G BROWN, JR.
7 Attorney General
8 EDWARD G. WEIL
9 Supervising Deputy Attorney General
10 LAURA ZUCKERMAN
11 DEBORAH SLON
12 Deputy Attorneys General

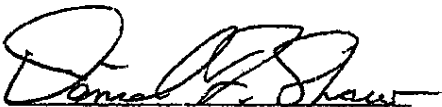
13 By: 
14 Edward G Weil
15 Deputy Attorney General
16 For Plaintiffs People of the State of California

17 Dated: 7/18/08

18 NANCY SHER COHEN
19 HELLER EHRMAN LLP

20 By: 
21 Nancy Sher Cohen
22 For Defendant H.J. Heinz Company L.P

23 Dated: 7/18/08

24 By: 
25 Associate General Counsel
26 For Defendant H.J. Heinz Company L.P

27 IT IS SO ORDERED, ADJUDGED, AND DECREED.

28 Dated: 7/22/08

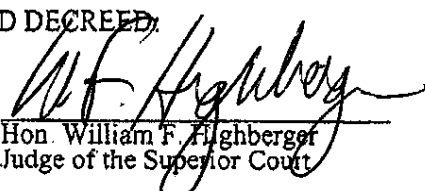

Hon. William F. Highberger
Judge of the Superior Court

Exhibit A

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FRENCH FRY PRODUCTS

- Golden Crinkles
- Golden Fries
- Steak Fries
- Extra Crispy Fast Food Fries
- Zesties
- Extra Crispy Golden Crinkles
- Country Style Fries
- Shoestrings
- Golden Twirls
- Extra Crispy Seasoned Crinkles
- Crispers!
- Texas Crispers
- Country Style Steak Fries
- Waffle Fries
- Crispy Crunchies!
- Cottage Fries
- Pixie Crinkles
- Zestie Twirls

TATER TOT PRODUCTS

- Tater Tots
- Extra Crispy Tater Tots
- Onion Tater Tots
- Mini Tater Tots
- Crispy Crowns
- ABC Tater Tots

OTHER FROZEN POTATO PRODUCTS

- Country Style Hash Browns
- 9 Hash Browns
- Potatoes O'Brien
- Southern Style Hash Browns
- Golden Patties
- Extra Crispy Easy Fries Golden Crinkles
- Extra Crispy Easy Fries Golden Fries
- Roasted Original
- Roasted Garlic & Parmesan
- Toaster Hash Browns
- Ultimate Baked Potato Cheddar Cheese
- Ultimate Baked Potato Sour Cream & Chive
- Ultimate Baked Potato Butter
- Steam n' Mash Cut Russet Potatoes
- Steam n' Mash Cut Sweet Potatoes
- Steam n' Mash Three Cheese
- Steam n' Mash Garlic Seasoned

1 Exhibit B

2
3 Acrylamide Sampling and Preparations Directions Procedures

4
5 Sampling Procedure

- 6 • Sample - Retail stand up gusseted bag of Ore-Ida product weighing 2 lbs or less.
7 • Each sample must have a different production day code. A sample OI code is
8 ON 08 E 27 J 17:40
9 ON - First two letters are production location
10 08 - Last two digits of the production year
11 E - The month of May, month is designated by the letters A through M with the
12 letter (I)skipped. January is A.
13 27 - The day of month that product is produced
14 J - Packaging line
15 17:40 - 24 hour time of when the product was packed into the bag.
16 • Sampling Frequency – 6-12 Month Collection Cycle
17 - Collect 5 samples of a product per month. Collect the samples for 6 separate
18 months over a 6-12 month period. This provides a total of 30 samples per product.
19 - Bake 1 tray for each of the 30 samples, per product.
20 - The 30 ACR readings will be averaged to create the annual average acrylamide
21 level for that specific product.
22 • Testing: Other than the Attorney General's own testing after the Target Level has been
23 achieved, testing of the product shall be conducted and/or supervised by a third party, paid
24 by Settling Defendant.

18 Product and Equipment Preparation

19 Oven preparation is the preferred preparation method used by the consumer and will be the
20 preparation method used for the evaluation of acrylamides.

- 21 • All products must be held for minimum of 24 hours in a household freezer at 0° - 10°F
22 prior to baking the samples. All products must be between 5° F and 15°F when prepared.
23 • Prepare ½ bags by weight according to declared package weights. Only sample whole
24 product, do not sample fragments or slivers.
25 • Place product on a 10" paper plate and cool 5 minutes and then immediately place
26 uncovered in the freezer
27 • When product is frozen place in labeled poly storage bags and submit for acrylamide
28 testing,
• Use a conventional household 30 inch electric standard size oven for product baking.

1 Oven Calibration

2 • The oven is to be preheated and then calibrated through three heating cycles. The
3 midpoint of the heating cycle should be the recommended preparation temperature. The
4 ovens heating cycle range must not exceed 50°F and the heating cycle should be no more
5 than 5 minutes long. Calibrate the ovens minimum of monthly.

6 • Thermometers used to calibrated equipment should be calibrated prior to use according
7 SOP following the instructions.

8 Oven Preparation

- 9 1. Use same oven to prepare all samples of a specific product over the life of the data
10 collection period.
- 11 2. Use 17" x 11" Bakers Secret cookie sheet - use same sheet for all samples of a set.
- 12 3. Pre heat a calibrated oven through 3 cycles prior to preparing products.
- 13 4. Use oven rack in middle of oven
- 14 5. Bake time for the sample is the **middle of the time range for 3 or more servings** as
15 shown on the bag in the box for bake preparation.
- 16 6. Allow oven to return to temperature (8 min. minimum) after removing product from
17 oven prior to baking next sample.
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THERMOMETER VERIFICATION/CALIBRATION INSTRUCTIONS AND TEMPLATE

Ice Point Method

- 1 Fill a large glass with crushed ice. Add clean tap water until the glass is full and stir well.
- 2 Put the thermometer probe in the ice water mixture so that the entire sensing area is submerged. Do not let the thermometer probe touch the sides or bottom of the glass. Wait at least 30 seconds or until indicator stops moving. Record 1 reading in the table below.
- 3 The thermometer should be **accurate within 0.5 degrees Celcius** and any variation either corrected (calibration) or accounted for. Correction or calibration of the digital thermometer can be done by turning the offset calibration screw until thermometer reads 0°C (32°F). Please note that probe of the thermometer should remain in the ice water during the adjustment.
- 4 Take one additional reading to verify that your thermometer is calibrated and record 1 reading in the table below.

Boiling Point Method

- 1 Bring clean tap water to a boil in a deep pan.
- 2 Put the thermometer probe into the boiling water so that the sensing area is completely submerged. Do not let the thermometer probe touch the bottom or sides of the pan. Wait at least 30 seconds or until indicator stops moving.
- 3 The thermometer should be **accurate within 0.5 degrees Celcius** and any variation either corrected (calibration) or accounted for. Correction or calibration of the digital thermometer can be done by turning the offset calibration screw until thermometer reads 98.9°C (210°F). Please note that probe of the thermometer should remain in the ice water during the adjustment. Adjust temperature to boiling temperature at test site elevation, or calibrate with certified standard.
- 4 Take one additional reading to verify that your thermometer is calibrated and record 1 reading in the table below.

	1st reading	2nd reading
Ice Bath		
Boiling Water		

(Thermometer should be accurate within 0.5 degrees Celcius)

Calibration Performed by: _____

Date: _____

1 Exhibit C

2 (For use if Settling Defendant provides sign warnings pursuant to Paragraph 3.2)

3 THIS COMMUNICATION APPLIES ONLY TO
4 RETAILERS LOCATED IN CALIFORNIA

5 The H.J. Heinz Company L.P. has entered into a consent judgment with the Attorney
6 General for the State of California regarding the presence of acrylamide in frozen fry
7 products sold by retailers in California.

8 Under the terms of this consent judgment, H.J. Heinz Company L.P. is providing the
9 enclosed sign warnings to retailers to be posted in retail stores selling any of the frozen
10 products identified below in California. In the consent judgment, H.J. Heinz Company L.P.
11 obtained a conditional release on your behalf. For the release to continue to be effective
12 after the date of this letter, you need to comply with the directions in this communication.

13 We request that you post these signs on your shelf(ves) or in your aisle(s) where frozen
14 potato products are sold. For stores less with than 7500 square feet of retail space and no
15 more than two cash registers, the sign may be placed at each cash register. Additionally,
16 stores that operate a customer service desk or similar central facility should also post a sign
17 at that location.

18 Please sign and return the written acknowledgement below to acknowledge that you have
19 received the signs and that they will be posted in accordance with these specifications until
20 you receive written instruction from H.J. Heinz Company L.P. to the contrary.

21 Thank you for your cooperation. If you need more signs or have any questions, such as the
22 appropriate sign locations for your specific retail store(s), please contact _____.

23 Acknowledged by:

24 _____ (Signature)
25 _____ (Print Name)
26 _____ (Company/Store Location)
27 _____ (Date)

28 List of Products

1 Exhibit D

2 (For use if Settling Defendant provides sign warnings pursuant to Paragraph 3.2)

3 THIS COMMUNICATION APPLIES ONLY TO
4 RETAILERS LOCATED IN CALIFORNIA

5 On ____, the H.J. Heinz Company L.P. sent you a letter enclosing sign warnings for
6 posting in your store(s) in California pursuant to a consent judgment entered into between
7 H.J. Heinz Company L.P. and the Attorney General for the State of California regarding the
8 presence of acrylamide in certain frozen fry products.

9 These signs are to be posted on your shelf(ves) or in your aisle(s) where frozen food
10 products are sold in your stores in California. For stores with less than 7500 square feet of
11 retail space and no more than two cash registers, the sign may be placed at each cash
12 register. Additionally, stores that operate a customer service desk or similar central facility
13 should also post a sign at that location.

14 As stated in our prior letter, H.J. Heinz Company L.P. obtained a conditional release
15 in the consent judgment on your behalf. For the release to be effective after the date of the
16 prior letter, you need to comply with the directions in this communication.

17 We have not received your written acknowledgement that you have received the
18 signs and that your store(s) will post these signs. Please sign and return the written
19 acknowledgement below to acknowledge that you have received the signs and that they will
20 be posted in accordance with these specifications until you receive written instruction from
21 H.J. Heinz Company L.P. to the contrary.

22 Thank you for your cooperation. If you need more signs or have any questions, such
23 as the appropriate sign locations for your specific retail store(s), please contact _____.

24 Acknowledged by:

25 _____ (Signature)
26 _____ (Print Name)
27 _____ (Company/Store Location)
28 _____ (Date)

DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: *People v. Frito-Lay*

Case No.: **Los Angeles County Superior Court No. BC 338956**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: P.O. Box 70550, Oakland, CA 94612-0550, addressed as follows:

On July 18, 2008, I served the attached **[Proposed] CONSENT JUDGMENT AS TO DEFENDANT H.J. HEINZ COMPANY, L.P.** by placing a true copy thereof enclosed in a sealed envelope with **Federal Express** (with courtesy copy by electronic mail), addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 18, 2008, at Oakland, California.

YEBONYA TAMBI
Declarant


Signature