

AUG 1 2008

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13 **SUPERIOR COURT OF CALIFORNIA**

14 **FOR THE COUNTY OF LOS ANGELES**

16 PEOPLE OF THE STATE OF CALIFORNIA,
ex rel. EDMUND G. BROWN, JR., Attorney
17 General of the State of California,

18 Plaintiff,

19 v.

20 FRITO-LAY, INC, ET AL.

21 Defendants.

Case No. BC 338956

**CONSENT JUDGMENT AS TO
DEFENDANT KETTLE FOODS, INC.**

Dept.: 307
Judge: Hon. William F. Highberger
Trial Date: July 28, 2008

22 **1. INTRODUCTION**

23 1.1 On August 26, 2005, the People of the State of California ("People"), by and
24 through the Attorney General of the State of California ("Attorney General"), filed a complaint for
25 civil penalties and injunctive relief for violations of Proposition 65 and unlawful business
26 practices in the Superior Court for the County of Los Angeles. The People's Complaint alleges
27 that the Defendants failed to provide clear and reasonable warnings that ingestion of the products
28 put in controversy by the Complaint (the "Products") would result in exposure to acrylamide, a

1 chemical known to the State of California to cause cancer. The Complaint further alleges that
2 under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
3 section 25249.6, also known as "Proposition 65," businesses must provide persons with a "clear
4 and reasonable warning" before exposing individuals to these chemicals, and that the Defendants
5 failed to do so. The Complaint also alleges that these acts constitute unlawful acts in violation of
6 the Unfair Competition Law, pursuant to Business and Professions Code sections 17200 *et seq.*

7 1.2 Kettle Foods, Inc. ("Settling Defendant") is among the Defendants named in the
8 complaint.

9 1.3 Settling Defendant is a corporation that employs more than 10 persons, or
10 employed ten or more persons at some time relevant to the allegations of the complaint, and that
11 manufactures, distributes and/or sells Products in the State of California or has done so in the past.

12 1.4 The products listed on Exhibit A were put in controversy by the Complaint and are
13 referred to in this Consent Judgment as "Covered Products."

14 1.5 For purposes of this Consent Judgment only, the People and the Settling Defendant
15 stipulate that this Court has jurisdiction over the allegations of violations contained in the People's
16 Complaint and personal jurisdiction over Settling Defendant as to the acts alleged in the People's
17 Complaint, that venue is proper in the County of Los Angeles, and that this Court has jurisdiction
18 to enter this Consent Judgment as a full and final resolution of all claims which were or could
19 have been raised in the Complaint based on the facts alleged therein.

20 1.6 The People and Settling Defendant enter into this Consent Judgment as a full and
21 final settlement of all claims relating to Covered Products arising from the failure to warn
22 regarding the presence of acrylamide in such Products. By execution of this Consent Judgment
23 and agreeing to provide the relief and remedies specified herein, Settling Defendant does not
24 admit any violations of Proposition 65 or Business and Professions Code sections 17200 *et seq.*,
25 or any other law or legal duty. Except as expressly set forth herein, nothing in this Consent
26 Judgment shall prejudice, waive or impair any right, remedy, or defense the Attorney General and
27 Settling Defendant may respectively have in any other or in future legal proceedings unrelated to
28 these proceedings. However, this Paragraph shall not diminish or otherwise affect the obligations,

1 responsibilities, and duties of the parties under this Consent Judgment, or the *res judicata* impacts
2 of this Consent Judgment on other litigation under Proposition 65.

3 1.7 The effective date of this Consent Judgment shall be the date on which the Consent
4 Judgment is entered as a judgment by the trial Court (“Effective Date”).

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

6 2.1 Target Level and Compliance Date. Settling Defendant shall reduce the level of
7 acrylamide in the Covered Products shipped for sale in California from the current levels to a
8 sales-weighted arithmetic mean level no higher than 275 parts per billion as determined pursuant
9 to the testing protocol in Paragraph 2.4 (“Target Level”), no later than December 31, 2011
10 (“Compliance Date”), or be subject to the provisions of Section 3 below. Settling Defendant shall
11 continue its program of research, development, and implementation of technologies and methods
12 intended to reduce the presence of acrylamide in the Covered Products shipped for sale in
13 California. Settling Defendant shall endeavor in good faith, using all commercially and
14 technologically reasonable efforts, to achieve the Target Level of acrylamide in all Covered
15 Products by December 31, 2011. For the purposes of this Consent Judgment, the Settling
16 Defendant shall not be considered to have achieved the Target Level if, as of the Compliance
17 Date, the arithmetic mean of the acrylamide concentration in any product line of Covered
18 Products (*e.g.*, Kettle brand “fried” potato chips and Kettle brand “baked” potato chips each
19 constitute a distinct “product line”), as determined in accordance with the Sampling Protocol,
20 described *supra* at ¶ 2.4(b) and (c), exceeds the Target Level by more than 25%. Any product line
21 for which pre-Compliance Date warnings have been provided in accordance with Paragraph 3.2
22 shall not be included in any calculation determining whether the Target Level or the threshold set
23 forth in Paragraph 3.5(a) has been achieved.

24 2.2 “Shipped for sale in California” means Covered Products that Settling Defendant
25 either directly ships into California for sale in California or that it sells to a distributor who
26 Settling Defendant knows will sell the Covered Products in California. Where a retailer or
27 distributor sells products both in California and other states, Settling Defendant shall take all
28 commercially reasonable steps to ensure that after the Target Levels have been reached, only

1 Covered Products that meet those levels are sold in California.

2 2.3 Grace Period. Settling Defendant may request a grace period extending the
3 Compliance Date by a period of up to six months by notifying the Attorney General at least ninety
4 days before the Compliance Date. The Attorney General will consider the extension for good
5 cause shown based on Settling Defendant's diligence in reducing acrylamide levels in Covered
6 Products as well as reported progress at the time of the requested extension. If the Attorney
7 General denies the extension, Settling Defendant may apply to the Court to extend the
8 Compliance Date and the Court may grant the requested extension upon timely application, for
9 good cause shown based on Settling Defendant's diligence and good faith efforts to reduce
10 acrylamide in Covered Products as well as reported progress at the time the request for extension
11 is considered..

12 2.4 Standard and Verification.

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

16 (b) Test results demonstrating compliance with the Target Level shall be
17 conducted in accordance with a sampling protocol that establishes that the sales-weighted
18 arithmetic mean of acrylamide levels in all Covered Products is at or below the Target Level with
19 a 95% confidence level, i.e., $p < 0.05$ ("Sampling Protocol"). The arithmetic mean is to be
20 determined from a sales-weighted average calculated according to the following formula:
21 Multiply the arithmetic mean of the acrylamide concentration of each product line of Covered
22 Products in each sampled month by that product line's fraction of monthly sales volume for all
23 product lines, and thereafter sum all such weighted means across all product lines that are
24 included in the weighted mean and across all sampled months. Sales volume for each product line
25 and total sales volume shall be based on 52-week Nielsen data for Los Angeles, San Francisco,
26 Sacramento and San Diego metropolitan areas available to Settling Defendant by the Compliance
27 Date and each anniversary of that Date.

28 (c) A Sampling Protocol for Covered Products that meets the requirements of

1 Paragraph 2.4(b) above shall require a minimum of the following: Settling Defendant shall take a
2 minimum of 30 samples from each product line among the Covered Products in the twelve months
3 prior to the Compliance Date. Five samples for each product line shall be taken in each of at least
4 six of the twelve months of the year prior to the Compliance Date. The samples for the year prior
5 to the Compliance Date shall then be aggregated according to the formula in Paragraph 2.4(b)
6 above to determine compliance with the Target Level.

7 (d) If the Attorney General enters a consent judgment with another sliced
8 potato chip manufacturer that adopts a sampling protocol that Settling Defendant determines is
9 preferable to the Sampling Protocol described in Paragraph 2.4(c) above for purposes of
10 measuring compliance with Target Level, Settling Defendant shall notify the Attorney General
11 that Settling Defendant intends to adopt the alternative sampling protocol as the Sampling
12 Protocol under this Consent Judgment. If the Attorney General objects to Settling Defendant's
13 adoption of the alternative sampling protocol, the Attorney General shall provide Settling
14 Defendant with the reasons for any objection, and Settling Defendant may apply to the Court to
15 allow the alternative sampling protocol to be used to measure compliance with the Target Level
16 under this Consent Judgment

17 (e) All test results, once provided to the Attorney General, shall be public
18 documents.

19 (f) If Settling Defendant's test results demonstrate that the Target Level has
20 been achieved for the Covered Products on or before the Compliance Date, Settling Defendant
21 shall be required to test the Covered Products according to the Sampling Protocol for two
22 additional years – in 2012 and in 2013. If those additional tests confirm that the Target Level has
23 been achieved for the Covered Products, Settling Defendant shall have no further duty to test the
24 Covered Products, although the Attorney General may apply to the Court for enforcement of the
25 judgment based on results of the Attorney General's own testing showing that the Target Level
26 has not been achieved. Any test data used by the Attorney General for this purpose must be
27 performed and analyzed by methods consistent with Paragraph 2.4(a) and include as many
28 samples of each product line as are required by Paragraph 2.4(c) or (d). A prima facie showing of

1 violation based on such test results may be rebutted by a showing made in compliance with all
2 aspects of the testing and sampling protocol under Paragraph 2.4.

3 (g) If Settling Defendant has not achieved the Target Level for the Covered
4 Products by the Compliance Date, it shall provide warnings for the Covered Products as provided
5 in Section 3 below. Settling Defendant may also continue testing of the Covered Products after the
6 Compliance Date until tests demonstrate that the Target Level has been achieved, at which time
7 Settling Defendant shall have no further duty to warn, although the Attorney General may apply
8 to the Court for enforcement of the judgment based on results of his own testing showing that the
9 Target Level has not been achieved. Any test data used by the Attorney General for this purpose
10 must be performed and analyzed by methods consistent with Paragraph 2.4(a) and include as
11 many samples of each product line as are required by Paragraph 2.4(c) or (d). A prima facie
12 showing of violation based on such test results may be rebutted by a showing made in compliance
13 with all aspects of the testing and sampling protocol under Paragraph 2.4.

14 2.5 Technology Licensing. The requirements in this Consent Judgment are not
15 contingent upon the use of any particular method to meet the Target Level, but Settling Defendant
16 shall license any patented technology used to meet the Target Level, whether existing or in the
17 future, to others for use in other food products, at a commercially reasonable price and using other
18 commercially reasonable terms.

19 **3. INJUNCTIVE RELIEF: CLEAR AND REASONABLE WARNINGS**

20 3.1 If Settling Defendant does not achieve the Target Level by the Compliance Date,
21 Settling Defendant shall, within 30 days after the Compliance Date, and until it achieves the
22 Target Level provide warnings as follows:

23 (a) By placing a warning label as described in Paragraph 3.3 (or Paragraph 3.5,
24 if applicable) on the package of each Covered Product for which the Target Level has not been
25 achieved that is shipped for sale in California; or, at Settling Defendant' option,

26 (b) By providing signs as described in Paragraph 3.4 (or Paragraph 3.5, if
27 applicable).

28 3.2 Pre-Compliance Date Warning. To the extent that Settling Defendant, at its option,

1 decides to place a label warning on packages of a Covered Product before the Compliance Date,
2 that warning shall conform to the form of label warning set forth in Paragraph 3.3, or Paragraph
3 3.5, if applicable.

4 3.3 Label Warnings. A label warning placed on the package of a Covered Product
5 pursuant to Paragraph 3.1(a) shall, at Settling Defendant's option, either:

6 (a) Conform to the requirements for the "safe harbor" warning methods set out in
7 California Code of Regulations, title 27, section 25601, subdivision (b) [formerly title 22, section
8 12601, subdivision (b)], while also stating that acrylamide is the chemical in question and/or the
9 approximate level of acrylamide in the product; or

10 (b) State as follows:

11 WARNING: This product contains acrylamide, a chemical known
12 to the State of California to cause cancer. Acrylamide is not added
13 to the products, but is created by browning potatoes. The FDA does
14 not recommend that people stop eating browned potatoes. For more
information, see the FDA's website at www.fda.gov.

15 3.4 Sign Warnings.

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

23 (b) Text of Sign. The sign shall state as follows:

24 WARNING: Kettle brand potato chips contain acrylamide, a
25 chemical known to the State of California to cause cancer.
26 Acrylamide is not added to the products, but is created by browning
27 potatoes. The FDA does not recommend that people stop eating
28 browned potatoes. For more information, see the FDA's website at
www.fda.gov.

1 (c) Placement of Sign. The sign shall be posted on the shelf(ves) or in the
2 aisle(s) where Covered Products are sold; unless the store has less than 7500 square feet of retail
3 space and no more than two cash registers, in which case it may be placed at each cash register. In
4 addition, if the store operates a customer service desk or similar central facility, the sign shall also
5 be posted at that location.

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

17 (e) Effect of Prior Signage. To the extent that, as of the Compliance Date,
18 Settling Defendant is required to provide a warning under this Consent Judgment and chooses to
19 provides signs but warning signs are already in place as a result of obligations of parties other than
20 Settling Defendant, Settling Defendant may rely on such signage to satisfy its warning obligations
21 under this Consent Decree if the signs in place materially satisfy the requirements of this Section
22 3 for Covered Products. If the signs do not materially satisfy the requirements of this Section 3
23 for Covered Products, the Parties shall negotiate in good faith to modify the required type, size,
24 placement and language set forth in Paragraph 3.4(a)-(d), in consideration of the signs already in
25 place.

26 3.5 Alternative Warning Language.

27 (a) Settling Defendant has the option to use the following alternative warning
28 language for labels or the text of signs if, as of the date the warning is first given or the

1 Compliance Date, whichever is earlier, the Covered Product(s) for which the warning is given has
2 acrylamide levels, calculated in accordance with the Sampling Protocol, that are above 275 parts
3 per billion but below 600 parts per billion:

4 **WARNING**

5 Cooked potatoes that have been browned, such as potato chips,
6 contain acrylamide, a chemical identified under California
7 Proposition 65 as causing cancer. Other cooked foods that have
8 been roasted or browned, such as coffee, cereals, french fries,
9 potato crisps, breads, crackers, cookies, and nuts, also contain
acrylamide, but usually at lower levels than in certain cooked
potatoes that have been browned.

10 Acrylamide is not added to these foods but is created when these
and certain other foods are browned.

11 The FDA has not advised people to stop eating potato chips or any
12 foods containing acrylamide as a result of cooking. For more
13 information, see FDA's website at www.fda.gov.

14 (b) Other Alternative Warning Language. If, after the Compliance Date,
15 defendants Frito-Lay, Inc. or Lance, Inc. are providing warnings using language set forth in a
16 Consent Judgment entered in this case, Settling Defendant, at its option, may use the same
17 warning language as that used by Frito-Lay or Lance.

18 3.6 Nothing in this Consent Judgment requires that warnings be given for Covered
19 Products sold outside the State of California.

20 3.7 If Settling Defendant has demonstrated that it has achieved the Target Level after
21 providing warnings under this Section 3, the Settling Defendant may cease providing warnings.

22 3.8 If, before the Compliance Date, Proposition 65 warnings are being given in
23 California retail locations that include the Covered Products, Settling Defendant shall be relieved
24 of the obligation to provide warnings under this Consent Judgment, but the Settling Defendant
25 shall still be obligated to use all commercially and technologically reasonable efforts to meet the
26 Target Level by the Compliance Date.

27 **4. PAYMENTS**

28 4.1 Civil Penalties. Settling Defendant shall pay a civil penalty pursuant to California

1 Health & Safety Code §§ 25249.7(b) and 25249.12 of \$250,000 no later than 30 days after the
2 Effective Date.

3 4.2 Other Payments. Within 30 days after the Effective Date, Settling Defendant shall
4 also pay \$100,000 to be used by the Attorney General for the enforcement of Proposition 65.
5 Funds paid pursuant to this paragraph shall be placed in an interest-bearing Special Deposit Fund
6 established by the Attorney General. These funds, including any interest, shall be used by the
7 Attorney General, until all funds are exhausted, for the costs and expenses associated with the
8 enforcement and implementation of Proposition 65, including investigations, enforcement actions,
9 other litigation or activities as determined by the Attorney General to be reasonably necessary to
10 carry out his duties and authority under Proposition 65. Such funding may be used for the costs of
11 the Attorney General's investigation, filing fees and other court costs, payment to expert witnesses
12 and technical consultants, purchase of equipment, travel, purchase of written materials, laboratory
13 testing, sample collection, or any other cost associated with the Attorney General's duties or
14 authority under Proposition 65. Funding placed in the Special Deposit Fund pursuant to this
15 Paragraph, and any interest derived therefrom, shall solely and exclusively augment the budget of
16 the Attorney General's Office and in no manner shall supplant or cause any reduction of any
17 portion of the Attorney General's budget.

18 4.3 Each payment required by this Consent Judgment shall be made through the
19 delivery of separate checks payable to "California Department of Justice," to the attention of
20 Edward G. Weil, Supervising Deputy Attorney General, Department of Justice, 1515 Clay Street,
21 20th Floor, Oakland, CA 94612.

22 5. MODIFICATION OF CONSENT JUDGMENT

23 5.1 This Consent Judgment may be modified by written agreement of the Attorney
24 General and Settling Defendant, after noticed motion, and upon entry of a modified consent
25 judgment by the Court thereon, or upon motion of the Attorney General or Settling Defendant as
26 provided by law and upon entry of a modified consent judgment by the Court. Before filing an
27 application with the Court for a modification to this Consent Judgment, Settling Defendant shall
28 meet and confer with the Attorney General to determine whether the Attorney General will

1 consent to the proposed modification. If a proposed modification is agreed upon, then Settling
2 Defendant and the Attorney General will present the modification to the Court by means of a
3 stipulated modification to the Consent Judgment.

4 5.2 Subsequent Settlement or Judgment.

5 (a) If the Attorney General agrees in a settlement or judicially entered consent
6 judgment that some or all of the products put in controversy by the Complaint (as sold by other
7 companies) do not require a warning under Proposition 65 (based on the presence of acrylamide),
8 or if a court of competent jurisdiction renders a final judgment, and the judgment becomes final,
9 that some or all of the products put in controversy by the Complaint (as sold by other companies)
10 do not require a warning for acrylamide under Proposition 65, then Settling Defendant may seek a
11 modification of this Consent Judgment to eliminate the duty to warn under section 3 of this
12 Consent Judgment and/or other duties related to the reduction of acrylamide levels, which
13 modification may be granted as provided by law.

14 (b) If the Attorney General agrees to a target level exceeding 275 parts per
15 billion of acrylamide with another sliced potato chip manufacturer, or agrees to warning language
16 that varies from the label or sign warning language set forth in Paragraphs 3.3(b) or 3.4(b),
17 respectively, then effective upon written notice by Settling Defendant to the Attorney General,
18 which notice shall be provided at the Settling Defendant's option, the target level and/or warning
19 language agreed to by the Attorney General with another sliced potato chip manufacture shall
20 become the Target Level, or required warning language, as the case may be, under this Consent
21 Judgment. Without limiting the foregoing, the Parties acknowledge that the Attorney General has
22 entered a settlement with Frito-Lay, Inc. ("Frito Settlement") in which the target level for
23 acrylamide in sliced potato chips is based on certain contingencies that limit the range of the
24 target level to be achieved, but do not allow the target levels to be precisely calculated as of the
25 Effective Date of this Consent Judgment. When the precise target level in the Frito Settlement is
26 calculated, it will be the target level against which the Target Level under this Consent Judgment,
27 for the purposes of this Paragraph 5(b), shall be compared. If the target level in the Frito
28 Settlement is greater than 275 ppb, then it shall apply as the Target Level in this Consent

1 Judgment.

2 5.3 If Proposition 65 or its implementing regulations are changed from their terms as
3 they exist on the Effective Date to establish explicitly, or by their application, that warnings for
4 acrylamide in the Covered Products are not required, Settling Defendant may seek a modification
5 of this Consent Judgment to relieve it of the duty to warn under Section 3 of this Consent
6 Judgment.

7 5.4 If an agency of the federal government, including, but not limited to the U.S. Food
8 and Drug Administration, states through any communication, regulation, or legally binding act,
9 that federal law precludes Settling Defendant from providing any of the warnings set forth in this
10 Consent Judgment or the manner in which the warnings are given, Settling Defendant may seek to
11 modify this Consent Judgment to bring the warnings under this Consent Judgment into
12 compliance with federal law, but the modification shall not be granted unless this Court
13 concludes, in a final judgment or order, that federal law precludes Settling Defendant from
14 providing the warnings set forth in this Consent Judgment. A determination that the provision of
15 some, but not all, forms of warning described in Section 3 above is not permitted shall not relieve
16 Settling Defendant of the duty to provide one of the other warnings described under this judgment
17 for which such determination has not been made.

18 5.5 If Proposition 65 or its implementing regulations are changed from their terms as
19 they exist on the Effective Date, and without limiting or otherwise affecting any other provision in
20 this Section 5, the Parties may seek modifications in the Consent Judgment as follows:

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

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

27 (c) If the change would provide a new form or manner of an optional or safe-
28 harbor warning, Settling Defendant may seek a modification to provide a warning in the newly

1 permitted form, but the modification shall not be granted unless the Court finds that the new
2 warning would not be materially less informative or likely to be seen, read and understood than
3 the warning provisions under this Consent Judgment.

4 5.6 If Settling Defendant corresponds in writing to an agency or branch of the United
5 States Government in connection with the application of Proposition 65 to acrylamide in fried or
6 baked potato products, then, so long as such correspondence is not confidential and would be
7 retrievable by the Attorney General under the Freedom of Information Act, the Settling Defendant
8 originating such communication shall provide the Attorney General with a copy of such
9 communication as soon as practicable, but not more than 10 days after sending or receiving the
10 correspondence; provided, however, that this Paragraph shall not apply to correspondence to or
11 from trade associations or other groups of which a Settling Defendant is a member, nor shall this
12 Paragraph apply to the extent Settling Defendant is no longer required to test for acrylamide under
13 this Consent Judgment.

14 **6. ENFORCEMENT**

15 6.1 The Attorney General may, by motion or application for an order to show cause
16 before this Court, enforce the terms and conditions contained in this Consent Judgment. In any
17 such proceeding, the Attorney General may seek whatever fines, costs, penalties, or remedies are
18 provided by law for failure to comply with the Consent Judgment and where said violations of this
19 Consent Judgment constitute subsequent violations of Proposition 65 or other laws independent of
20 the Consent Judgment and/or those alleged in the Complaint, the Attorney General is not limited
21 to enforcement of the Consent Judgment, but may seek in another action whatever fines, costs,
22 penalties, or remedies are provided for by law for failure to comply with Proposition 65 or other
23 laws. In any action brought by the Attorney General or another enforcer alleging subsequent
24 violations of Proposition 65 or other laws, Settling Defendant may assert any and all defenses that
25 are available, including the *res judicata* or collateral estoppel effect of this Consent Judgment.

26 **7. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

27 7.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
28 by the party he or she represents to stipulate to this Consent Judgment and to enter into and

1 execute the Consent Judgment on behalf of the party represented and legally to bind that party.

2 **8. CLAIMS COVERED**

3 8.1 This Consent Judgment is a full, final, and binding resolution between the People
4 and Settling Defendant, of any violation of Proposition 65, Business & Professions Code sections
5 17200 *et seq.*, or any other statutory or common law claims that have been or could have been
6 asserted in the Complaint against Settling Defendant for failure to provide clear and reasonable
7 warnings of exposure to acrylamide from the consumption of the Covered Products, or any other
8 claim based on the facts or conduct alleged in the Complaint, whether based on actions committed
9 by Settling Defendant or by any entity to whom Settling Defendant distributes or sells Covered
10 Products, or any entity that sells the Covered Products to consumers except for sales of Covered
11 Products by retailers during any period in which such retailers have not posted signs sent to them
12 pursuant to section 3.4(d). With this one exception, as to Covered Products, compliance with the
13 terms of this Consent Judgment resolves any issue now, in the past, and in the future concerning
14 compliance by Settling Defendant, its parents, shareholders, divisions, subdivisions, subsidiaries,
15 sister companies, affiliates, franchisees, cooperative members, and licensees; its distributors,
16 wholesalers, and retailers who sell Covered Products (including without limitation those retailers
17 listed in Exhibit D); and the predecessors, successors, and assigns of any of them, with the
18 requirements of Proposition 65 or Business and Professions Code sections 17200 *et seq.* for
19 Covered Products.

20 **9. RETENTION OF JURISDICTION**

21 9.1 This Court shall retain jurisdiction of this matter to implement the Consent
22 Judgment.

23 **10. PROVISION OF NOTICE**

24 10.1 When any party is entitled to receive any notice under this Consent Judgment, the
25 notice shall be sent by overnight courier service to the person and address set forth in this
26 Paragraph. Any party may modify the person and address to whom the notice is to be sent by
27 sending each other party notice by certified mail, return receipt requested. Said change shall take
28 effect for any notice mailed at least five days after the date the return receipt is signed by the party

1 receiving the change.

2 10.2 Notices shall be sent by First Class Mail and/or overnight delivery to the following
3 when required:

4 For the Attorney General:

5 Edward G. Weil, Supervising Deputy Attorney General
6 1515 Clay Street, 20th Floor
7 Oakland, CA 94612
8 Telephone: (510) 622-2149
9 Facsimile: (510) 622-2270

10 10.3 Notices for the Settling Defendant shall be sent to:

11 For Kettle Foods, Inc.:

12 Richard C. Coffin, Esq.
13 Barg Coffin Lewis & Trapp, LLP
14 350 California, 22nd Floor
15 San Francisco, California 94104-1435
16 Telephone: (415) 228-5400
17 Facsimile: (415) 228-5450

18 Michèle B. Corash
19 Morrison & Foerster, LLP
20 425 Market Street
21 San Francisco, California 94105-2482
22 Telephone: (415) 268-7000
23 Facsimile: (415) 268-7522

24 **11. COURT APPROVAL**

25 11.1 This Consent Judgment shall be submitted to the Court for entry by noticed motion
26 or as otherwise may be required or permitted by the Court. If this Consent Judgment is not
27 approved by the Court, it shall be of no force or effect and may not be used by the Attorney
28 General or Settling Defendant for any purpose.

12. ENTIRE AGREEMENT

13 12.1 This Consent Judgment contains the sole and entire agreement and understanding
14 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
15 negotiations, commitments and understandings related hereto. No representations, oral or
16 otherwise, express or implied, other than those contained herein have been made by any Party
17 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
18 to exist or to bind any of the Parties.


1 **13. EXECUTION IN COUNTERPARTS**

2 13.1 The stipulations to this Consent Judgment may be executed in counterparts and by
3 means of facsimile, which taken together shall be deemed to constitute one document.

4 IT IS SO STIPULATED:

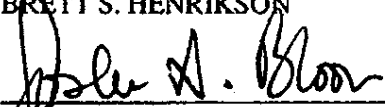
5 DATED: July 30, 2008

6 EDMUND G. BROWN, JR.
7 Attorney General
8 J. MATTHEW RODRIQUEZ
9 Chief Assistant Attorney General
10 KEN ALEX
11 Senior Assistant Attorney General
12 EDWARD G. WEIL
13 Supervising Deputy Attorney General
14 LAURA ZUCKERMAN
15 Deputy Attorney General

16 By: 
17 Edward G. Weil
18 Deputy Attorney General
19 For Plaintiffs People of the State of California

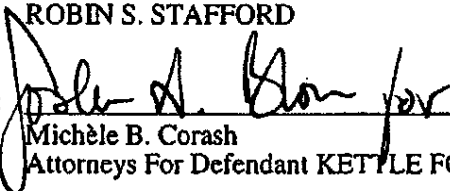
20 DATED: July 30, 2008

21 BARG COFFIN LEWIS & TRAPP, LLP
22 RICHARD C. COFFIN
23 JOSHUA A. BLOOM
24 BRETT S. HENRIKSON

25 By: 
26 Joshua A. Bloom
27 Attorneys For Defendant KETTLE FOODS, INC.

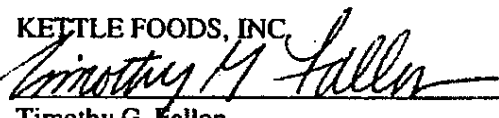
28 DATED: July 30, 2008

MORRISON & FOERSTER, LLP
MICHÈLE B. CORASH
JAMES M. SCHURZ
BROOKS M. BEARD
ROBIN S. STAFFORD

By: 
Michèle B. Corash
Attorneys For Defendant KETTLE FOODS, INC.

DATED: July 30, 2008

KETTLE FOODS, INC.

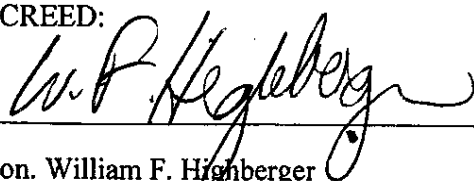
By: 
Timothy G. Fallon
President

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IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated:

8/1/08



Hon. William F. Highberger
Judge of the Superior Court

Exhibit A

Covered Products

For the purposes of this Consent Judgment, Covered Products shall include all sliced potato chip products manufactured by Settling Defendant at any time while this Consent Judgment remains in effect, including but not limited to the following:

Fried Potato Chip Product Line

Kettle Brand

Kettle Chips	Backyard Barbeque
Kettle Chips	Sour Cream, Onion and Chive
Kettle Chips	Death Valley Chipotle
Kettle Chips	Lightly Salted
Kettle Chips	Unsalted
Kettle Chips	New York Cheddar w/ Herbs
Kettle Chips	Sea Salt & Vinegar
Kettle Chips	Yogurt & Green Onion
Kettle Chips	Honey Dijon
Kettle Chips	Spicy Thai
Kettle Chips	Tuscan Three Cheese
Kettle Chips	Cheddar Beer
Kettle Chips	Sweet Onion
Kettle Krinkle	Salt & Fresh Ground Pepper
Kettle Krinkle	Buffalo Bleu
Kettle Krinkle	Lightly Salted
Kettle Krinkle	Dill & Sour Cream
Kettle Krinkle	Classic BBQ
Kettle Krinkle	Island Jerk
Kettle Organic	Lightly Salted
Kettle Organic	Chipotle Chili Barbeque
Kettle Organic	Sea Salt & Black Pepper

Trader Joe's Brand

- Ridge Cut Potato Chips 16 oz Lightly Salted
- Ridge Cut Potato Chips 16 oz Salt & Pepper
- Hawaiian Style Potato Chips 7 oz Salted
- Hawaiian Style Potato Chips 7 oz Salt & Vinegar
- Hawaiian Style Potato Chips 7 oz Hickory Barbeque

Costco Brand

- Kirkland Signature Krinkle Cut Potato Chips 32 oz Lightly Salted

Whole Foods Brand

- 365 Brand Homestyle Potato Chips 15 oz Lightly Salted
- 365 Brand Homestyle Potato Chips 15 oz Barbeque
- 365 Brand Homestyle Potato Chips 15 oz Salt & Vinegar
- 365 Brand Homestyle Potato Chips 15 oz Garlic Ranch

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Kroger Brand

- Naturally Preferred Original Potato Chips 9 oz Original
- Naturally Preferred Original Potato Chips 9 oz Classic BBQ
- Naturally Preferred Original Potato Chips 9 oz Balsamic Vinegar and Sea Salt
- Naturally Preferred Original Potato Chips 9 oz Sea Salt & Cracked Pepper
- Naturally Preferred Original Potato Chips 9 oz Aged Cheddar

Baked Potato Chip Product Line

Kettle Brand

- Kettle Bakes Lightly Salted
- Kettle Bakes Aged White Cheddar
- Kettle Bakes Hickory Honey Barbeque
- Kettle Bakes Sea Salt & Vinegar

Trader Joe's Brand

Trader Joe's Light Salt Baked Potato Chips

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Exhibit B

(For use if Settling Defendant provides sign warnings pursuant to Paragraph 3.4)

**THIS COMMUNICATION APPLIES ONLY TO
RETAILERS LOCATED IN CALIFORNIA**

Kettle Foods, Inc. ("Kettle") has entered into a consent judgment with the Attorney General for the State of California regarding the presence of acrylamide in sliced potato chip products sold by retailers in California.

Under the terms of this consent judgment, Kettle is providing the enclosed sign warnings to retailers to be posted in retail stores selling any of the products identified below in California. In the consent judgment, Kettle obtained a conditional release on your behalf. For the release to continue to be effective after the date of this letter, you need to comply with the directions in this communication.

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

Please sign and return the written acknowledgment below to acknowledge that you have received the signs and that they will be posted in accordance with these specifications until you receive written instruction from Kettle to the contrary.

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

Acknowledged by:

_____ (Signature)

_____ (Print Name)

_____ (Company/Store Location)

_____ (Date)

Exhibit C

(For use if Settling Defendant provides sign warnings pursuant to Paragraph 3.4)

**THIS COMMUNICATION APPLIES ONLY TO
RETAILERS LOCATED IN CALIFORNIA**

On ____, Kettle Foods, Inc. ("Kettle") sent you a letter enclosing sign warnings for posting in your store(s) in California pursuant to a consent judgment entered into between Kettle and the Attorney General for the State of California regarding the presence of acrylamide in sliced potato chip products.

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

As stated in our prior letter, Kettle obtained a conditional release in the consent judgment on your behalf. For the release to be effective after the date of the prior letter, you need to comply with the directions in this communication.

We have not received your written acknowledgment that you have received the signs and that your store(s) will post these signs. Please sign and return the written acknowledgment below to acknowledge that you have received the signs and that they will be posted in accordance with these specifications until you receive written instruction from Kettle to the contrary.

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

(Signature)
(Print Name)
(Company/Store Location)
(Date)

Exhibit D

Non-Exclusive List of Retailers Within The Scope of
Settlement and Release For Sale of Kettle Products

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- Trader Joe's Company
- Whole Foods Market, Inc.
- Costco Wholesale Corporation
- The Kroger Company
- Safeway, Inc.
- New Albertson's, Inc.
- Albertsons, LLC
- Ralph's Grocery Company
- Raley's, Inc.
- Smart & Final, Inc.
- Stater Bros. Market
- The Vons Companies, Inc.
- Food 4 Less of California, Inc.
- Food 4 Less of Southern California, Inc.
- Fred Meyer Stores, Inc.
- Foods Co.