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13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF LOS ANGELES
16

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

20 Plaintiff,

21 v.

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

24 Defendants.

Case No.: BC 338956

~~Proposed~~
CONSENT JUDGMENT AS TO
DEFENDANT LANCE, INC.

Dept: 307
Judge: Hon. William F. Highberger
Trial Date: August 4, 2008
Action Filed: August 26, 2005

25 1. INTRODUCTION

26 1.1. On August 26, 2005, the People of the State of California ("People"), filed a
27 complaint for civil penalties and injunctive relief for violations of Proposition 65 and unlawful
28 business practices in the Superior Court for the County of Los Angeles ("Complaint"). The

Original Conformed Copy
Of Original Filed
Los Angeles Superior Court

AUG - 1 2008

John A. Clarke, Executive Officer/Clerk
By: I. Flores, Deputy

1 People's Complaint alleges that the Defendants failed to provide clear and reasonable warnings that
2 ingestion of the products put at issue in the Complaint (the "Products"), would result in exposure to
3 acrylamide, a chemical known to the State of California to cause cancer. The Complaint further
4 alleges that under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
5 Code section 25249.6, also known as "Proposition 65," businesses must provide persons with a
6 "clear and reasonable warning" before exposing individuals to these chemicals, and that the
7 Defendants failed to do so. The Complaint also alleges that these acts constitute unlawful acts in
8 violation of the Unfair Competition Law, pursuant to Business and Professions Code sections
9 17200, et seq.

10 1.2. Lance, Inc. ("Settling Defendant") is among the Defendants named in the
11 Complaint.

12 1.3. Settling Defendant is a North Carolina corporation that employs more than 10
13 persons, and has employed ten or more persons at some time relevant to the allegations of the
14 Complaint, and that manufactures the Products, and ships Products for sale in California and has
15 done so in the past.

16 1.4. The Products included in this Consent Judgment are those of Settling Defendant's
17 Products that are shipped for sale in California under the Cape Cod brand ("Cape Cod Chips") or
18 under other of Settling Defendants brand names ("Other Branded Chips"). The Cape Cod Chips
19 and the Other Branded Chips are collectively referred to herein as "Covered Products."

20 1.5. For purposes of this Consent Judgment only, the People and the Settling Defendant
21 stipulate that this Court has jurisdiction over the allegations of violations contained in the People's
22 Complaint and personal jurisdiction over Settling Defendant as to the acts alleged in the People's
23 Complaint, that venue is proper in the County of Los Angeles, and that this Court has jurisdiction to
24 enter this Consent Judgment as a full and final resolution of all claims which were or could have
25 been raised against Settling Defendant in the Complaint based on the facts alleged therein.

26 1.6. The People and Settling Defendant enter into this Consent Judgment as a full and
27 final settlement of all claims relating to Covered Products arising from the failure to warn regarding
28 the presence of acrylamide in such Products. By execution of this Consent Judgment and agreeing

1 to provide the relief and remedies specified herein, Settling Defendant denies the material factual
2 and legal allegations contained in the Complaint and maintains that all Products that it has sold in
3 California and/or shipped for sale in California (as that term is defined in paragraph 2.2 below)
4 have been and are in compliance with all laws. Nothing in this Consent Judgment shall be
5 construed as an admission by Settling Defendant of any fact, finding, issue of law, or violation of
6 law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by
7 Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
8 specifically denied by Settling Defendant. This Consent Judgment shall not be admissible in any
9 action or proceeding except for proceedings to enforce or modify this Consent Judgment as set forth
10 herein. However, this Paragraph shall not diminish or otherwise affect Settling Defendant's
11 obligations, responsibilities and duties to comply with this Consent Judgment.

12 1.7. The effective date of this Consent Judgment shall be the date on which the Consent
13 Judgment is entered as a judgment by the trial Court ("Effective Date").

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

15 2.1. Target Level and Target Date.

16 (a) Except as provided in section 2.1(b) below, Settling Defendant shall reduce
17 the level of acrylamide in all Covered Products after December 31, 2011 (the "Target Date") to a
18 weighted arithmetic mean of 275¹ parts per billion ("ppb") (the "Target Level"), unless warnings
19 are given pursuant to Section 3 below. For the purposes of this Consent Judgment, the Settling
20 Defendant shall not be considered to have achieved the Target Level if, as of the Compliance Date,
21 the arithmetic mean of the acrylamide concentration in any product line of Covered Products (e.g.,
22 Cape Cod low-fat potato chips constitutes a distinct "product line"), as determined in accordance
23 with the calculation method described *infra* at section 2.3, exceeds the Target Level by more than
24 25%. Any product line for which pre-Target Date warnings have been provided in accordance with
25 Section 3.2 shall not be included in any calculation determining whether the Target Level or the
26 threshold set forth in Section 3.5(a) has been achieved.

27 _____
28 ¹ Except where a higher level is set through application of section 6.2(a) below.

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

6 (b) Non-Averaged Products. The following Covered Products shall not be included
7 in calculations of weighted averages to determine compliance with the Target Level set forth in
8 section 2.1(a) above, and the following terms shall govern their continued sale in California:

9 (i) Products with acrylamide concentrations exceeding 2,500 ppb. Within 30
10 days of the Effective Date, Settling Defendant will provide label warnings, consistent with the
11 requirements of sections 3.2(a) and 3.3 below, for any Covered Products which have acrylamide
12 concentrations with an arithmetic mean exceeding 2,500 ppb. Settling Defendant may, at its sole
13 discretion, comply with this provision by providing such warnings or, alternatively, by taking all
14 commercially reasonable steps to ensure that such Covered Products are not shipped for sale in
15 California.

16 (ii) Abandoned reduction efforts. At any time after the Effective Date,
17 Settling Defendant may, at its sole discretion, abandon its good faith efforts to achieve the Target
18 Level set forth in section 2.1(a) for any or all Covered Products. Within 30 days of reaching a
19 decision to abandon such good faith efforts, Settling Defendant may, at its sole discretion, comply
20 with this provision by providing warnings consistent with the requirements of Section 3 below for
21 all such affected Covered Products or, alternatively, by taking all commercially reasonable steps to
22 ensure that such affected Covered Products are not shipped for sale in California. If Settling
23 Defendant decides to continue to ship affected Covered Products for sale in California with
24 warnings, it shall, within 30 days of such abandonment, pay the civil penalty required by Paragraph
25 4.1(b).

26 2.2. "Shipped for sale in California" means direct shipment by Settling Defendant into
27 California for sale in California, or sale by Settling Defendant to a third party that Settling
28 Defendant knows will sell the Covered Product in California.

1 2.3. Standard and Verification.

2 (a) For purposes of this Consent Judgment, testing for acrylamide performed by
3 either party shall be performed using either GC/MS (Gas Chromatograph/Mass Spectrometry),
4 LC-MS/MS (Liquid Chromatograph-Mass Spectrometry) or any other testing method agreed upon
5 by the parties.

6 (b) Test results demonstrating compliance with the Target Level must be taken
7 from at least ten batches of Covered Products taken from Settling Defendant's production line and
8 tested over no less than a ten-day period. To comply with the Target Levels, the testing must
9 establish that the arithmetic mean of the samples is at or below the Target Level, with a 95%
10 confidence level, i.e. $p < .05$.

11 (c) For purposes of this Consent Judgment, the weighted arithmetic mean is to
12 be calculated by the following formula: Multiply the arithmetic mean of the acrylamide
13 concentration of each product (established by the sampling methodology set forth in paragraph
14 2.3(a) and (b)) by that product's fraction of total sales volume for all products to be included in the
15 weighted arithmetic mean, and thereafter sum all such adjusted concentrations for all products that
16 are required to be included in the weighted arithmetic mean. Sales volume for each product and for
17 total sales volume shall be based upon the most current 52 week Nielson data for metropolitan areas
18 Los Angeles, San Francisco, San Diego and Sacramento available to Settling Defendant one month
19 prior to the Target Date or other testing date established in this Section 2.3. No Non-Averaged
20 Products (as described in Section 2.1(b)) are to be included in the weighted average calculated
21 under this Section 2.3(c).

22 (d) All test results of acrylamide concentrations in Covered Products provided to
23 the Attorney General by Settling Defendant shall be public documents.

24 (e) If Settling Defendant's test results demonstrate that the Target Level has
25 been achieved for any Covered Product, Settling Defendant shall be required to test that Covered
26 Product annually: between three and four years of the date on which the Target Level is achieved,
27 and between four and five years of the date on which the Target Level is achieved. If those tests
28 confirm that the Target Level has been achieved for the Covered Product, Settling Defendant shall

1 have no further duty to test that Covered Product, although the Attorney General may, after meeting
2 and conferring with Settling Defendant, apply to the Court for enforcement of the judgment based
3 on results of his own testing showing that the Target Level has not been achieved. Any test data
4 used by the Attorney General for this purpose must be performed and analyzed by methods set forth
5 in sections 2.3(a). A prima facie showing of a violation based on such test results may be rebutted
6 by a showing made in compliance with all aspects of the testing and sampling protocol under
7 section 2.3(a)-(c). Nothing in this Consent Judgment precludes Settling Defendant from claiming
8 business confidentiality as to sales volumes of products sold in California.

9 (f) If Settling Defendant has not achieved the Target Level for any Covered
10 Product by the Target Date, it shall provide warnings for such Covered Product as provided herein
11 in Section 3. Settling Defendant may also continue periodic testing of such Covered Product until
12 tests demonstrate that the Target Level has been achieved for such Covered Product, at which time
13 Settling Defendant shall have no further duty to warn, although the Attorney General may after
14 meeting and conferring with Settling Defendant, apply to the Court for enforcement of the
15 judgment based on results of his own testing showing that the Target Level has not been achieved.
16 Any test data used by the Attorney General for this purpose must be performed and analyzed by
17 methods set forth in sections 2.3(a). A prima facie showing of a violation based on such test results
18 may be rebutted by a showing made in compliance with all aspects of the testing and sampling
19 protocol under section 2.3(a)-(c). Nothing in this Consent Judgment precludes Settling Defendant
20 from claiming business confidentiality as to sales volumes of products sold in California.

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

22 3.1 Except as set forth in paragraph 2.1(b) above, if Settling Defendant does not achieve the
23 Target Levels by the Target Date, Settling Defendant shall within 30 days of the Target Date, and
24 until it achieves the Target Levels, provide warnings as follows:

25 (a) by placing a warning label as described in Section 3.2(b) on the package of
26 (i) each Covered Product for which the Target Level under Section 2.1(a) has not been achieved
27 that is shipped for sale in California; and (ii) all Covered Products which Section 2.1(a) would
28 require Settling Defendant to exclude from the calculation of the Target Level; or, at Settling

1 Defendant's option,

2 (b) by providing signs as described in Section 3.3.

3 3.2 Label Warnings. A label warning placed on the package of a Covered Product
4 pursuant to Section 3.1(a) shall provide substantially the same information as set forth for sign
5 warnings in Section 3.3(b).

6 3.3 Sign Warnings.

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

14 (b) Text of Sign.

15 (i) The sign shall contain the following text, unless modified by
16 agreement of the parties, or as set forth in 3.3(b)(ii):

17 **WARNING**

18 **WARNING: Cooked potatoes that have been browned, such as**
19 **potato chips, contain acrylamide, a chemical known to the State of**
California to cause cancer.

20 **Acrylamide is not added to these foods, but is created when these**
21 **and certain other foods are browned.**

22 **The FDA encourages people to continue to eat a wide variety of**
23 **foods. The FDA has not advised people to stop eating potato chips**
or any foods containing acrylamide as a result of cooking. For more
information, see www.fda.gov.

24 (ii) Modification of Warning Language. If, after the compliance date,
25 defendants Frito-Lay or Kettle Foods are providing warnings using language set forth in a Consent
26 Judgment entered in this case, Settling Defendant may use the same warning language as that
27 provided for the other defendants.

28 (c) Placement of Sign. To the extent that, as of the Compliance Date, Settling

1 Defendant is required to provide a warning under this Consent Judgment and chooses to do so by
2 providing signs, it shall instruct retailers that the sign shall be posted as follows: (i) on the shelves
3 or in the aisle(s) where such Covered Products are sold; unless the store has less than 7,500 square
4 feet of retail space and no more than two cash registers, in which case it may be placed at each cash
5 register. In addition, if the store operates a customer service desk or similar central facility, the sign
6 shall also be posted at that location.

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

20 (e) Effect of Prior Signage. To the extent that, as of the Target Date, Settling
21 Defendant is required to provide a warning under this Consent Judgment and chooses to provides
22 signs but warning signs are already in place as a result of obligations of parties other than Settling
23 Defendant, Settling Defendant may rely on such signage to satisfy its warning obligations under
24 this Consent Judgment so long as such signs materially satisfy the requirements of this section 3 or,
25 if they do not, the Parties shall negotiate in good faith to modify the required form, type, size,
26 placement and language set forth in Section 3.3(a)-(c), in consideration of the signs already in
27 place.

28 3.4 Nothing in this Consent Judgment requires that warnings be given for Covered

1 Products that are not shipped for sale in California.

2 3.5 If Settling Defendant has demonstrated by testing pursuant to Section 2 hereof that it
3 has achieved the Target Levels for any of the Covered Products that had previously required a
4 warning under Section 3, the Settling Defendant may cease providing such warning.

5 3.6 Should Settling Defendant, in conjunction with one or more retailers, desire to
6 provide the warning via sales receipts or other information provided to each customer at checkout,
7 Settling Defendant shall meet and confer with the Attorney General and, following agreement,
8 jointly apply to the Court for approval of a plan for implementing warnings in such manner. Such
9 application shall be approved only upon a showing that the warning provided in such manner will
10 comply with the law and be at least as effective as the forms of warnings otherwise required by this
11 Consent Judgment.

12 4. SETTLEMENT PAYMENTS

13 4.1 Civil Penalties.

14 (a) Settling Defendant shall pay a civil penalty to the Attorney General pursuant
15 to Health & Safety Code section 25249.12 of \$47,500 no later than 30 days after the Effective Date.

16 (b) As an incentive for progress in acrylamide reduction, if Settling Defendant
17 does not attain the Target Level by the Target Date for Covered Products shipped for sale in
18 California after the Target Date, Settling Defendant shall make a payment of \$50,000 in civil
19 penalties pursuant to Health & Safety Code section 25219.12 no later than 30 days after the Target
20 Date, unless, before the Target Date, Settling Defendant has already paid this penalty pursuant to a
21 decision to abandon reduction efforts under section 2.1(b)(ii) above.

22 4.2 Additional Payments. No later than 30 days after the Effective Date, Settling
23 Defendant shall pay \$47,500 to be used by the Attorney General for the enforcement of Proposition
24 65. Funds paid pursuant to this paragraph shall be placed in an interest-bearing Special Deposit
25 Fund established by the Attorney General. These funds, including any interest, shall be used by the
26 Attorney General, until all funds are exhausted, for the costs and expenses associated with the
27 enforcement and implementation of Proposition 65, including investigations, enforcement actions,
28 other litigation or activities as determined by the Attorney General to be reasonably necessary to

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

9 4.3. Each payment required by this Consent Judgment shall be made through the delivery
10 of separate checks payable to "California Department of Justice," to the attention of Edward G.
11 Weil, Supervising Deputy Attorney General, Department of Justice, 1515 Clay Street, 20th Floor,
12 Oakland, CA 94612.

13 **5. OTHER BRANDED CHIPS**

14 5.1 This Consent Judgment covers Cape Cod Chips as well as Other Branded Chips. The
15 Parties shall negotiate in good faith for a period of 90 days, which period may be extended by a
16 writing between the Parties, as to whether any provision of this Consent Judgment shall be
17 modified as regards Other Branded Chips shipped for sale in California. As to any product for
18 which agreement is reached, the parties will submit a stipulation to the Court modifying the
19 Consent Judgment as provided in Section 6 below. Except to the extent that the parties stipulate
20 and the Court thereafter modifies this Consent Judgment to so provide, the obligations of this
21 Consent Judgment applicable to Cape Cod Products do not apply to such Other Branded Chips.

22 **6. MODIFICATION OF CONSENT JUDGMENT**

23 6.1. 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 consent

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

4 6.2. Other Settlements.

5 (a) If the Attorney General agrees or has agreed in a settlement or judicially
6 entered consent judgment with another manufacturer of sliced potato chips on terms, as drafted or
7 as implemented, that (i) are materially more beneficial than those set forth in this Consent Judgment
8 as to the time of compliance or the form of warning (other than for Products subject to Section
9 2.1(b)(i)), or (ii) allow a sliced potato chip product with an acrylamide concentration higher than
10 275 ppb to be shipped for sale and/or sold in California without a warning; then the parties shall
11 stipulate that this Consent Judgment will be modified to correspond to such terms as are provided in
12 such other settlement or judicially entered consent judgment. Without limiting the foregoing, the
13 Parties acknowledge that the Attorney General has entered a settlement with Frito-Lay, Inc. ("Frito
14 Settlement") in which the target level for acrylamide in sliced potato chips is based on certain
15 contingencies that limit the range of the target level to be achieved, but do not allow the target
16 levels to be precisely calculated as of the Effective Date of this Consent Judgment. When the
17 precise target level in the Frito Settlement is calculated, it will be the target level against which the
18 Target Level under this Consent Judgment, for the purposes of this Paragraph 6.2(b), shall be
19 compared. If the target level in the Frito Settlement is greater than 275 ppb, then it shall apply as
20 the Target Level in this Consent Judgment.

21 (b) If the Attorney General agrees or has agreed in a settlement or judicially
22 entered consent judgment that some or all Products (as sold by other companies) do not require a
23 warning under Proposition 65 (based on the presence of acrylamide), or if a court of competent
24 jurisdiction renders a final judgment, and the judgment becomes final, that some or all Products (as
25 sold by other companies) do not require a warning for acrylamide under Proposition 65, then
26 Settling Defendant may seek, but is not automatically entitled to, a modification of this Consent
27 Judgment to eliminate its duties to warn and/or other duties related to the reduction of acrylamide
28 levels.

1 (c) The Attorney General shall provide Settling Defendant with written notice no
2 less than 10 days after the Attorney General has agreed to modify the time of compliance provided
3 in another defendant's settlement agreement. In addition, immediately upon receipt of any motion
4 to modify another defendant's settlement agreement, the Attorney General shall provide Settling
5 Defendant a copy of such motion unless Settling Defendant has been already served by the moving
6 party (as evidenced by a proof of service accompanying the motion).

7 6.3. 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, that
9 federal law precludes Settling Defendant from providing any of the warnings set forth in this
10 Consent Judgment or the methodology for providing such warnings, Settling Defendant may seek
11 to modify this Consent Judgment to bring the warnings under this Consent Judgment into
12 compliance with federal law. A determination that the provision of some, but not all, forms or
13 methodologies of warning described in Section 3 above is not permitted shall not relieve Settling
14 Defendant of the duty to provide one of the other forms or methodologies of warnings described
15 under this judgment for which such determination has not been made.

16 6.4. If Proposition 65 or its implementing regulations are changed from their terms as
17 they exist on the date of entry of judgment, either party or both parties may seek modification of the
18 Consent Judgment through stipulation or noticed motion, which shall be granted upon
19 demonstration of such changes, as follows:

20 (a) If the change establishes that warnings for acrylamide in sliced potato chip
21 products are not required, Settling Defendant may seek a modification of this Consent Judgment to
22 eliminate its duties to warn and/or reduce acrylamide levels.

23 (b) If the change establishes that the warnings provided by this Consent
24 Judgment would not comply with Proposition 65 or its implementing regulations, either party may
25 seek a modification of the Consent Judgment to conform the judgment to the change in law.

26 (c) If the change would provide a new form, manner, or content for an optional
27 or safe-harbor warning, Settling Defendant shall meet and confer with the Attorney General and,
28 following agreement, jointly apply to the Court for approval of a plan for implementing warnings in

1 such manner. Such application shall be approved only upon a showing that the warning provided in
2 such manner will comply with the law and be at least as effective as the forms of warnings
3 otherwise required by this Consent Judgment.

4 **7. ENFORCEMENT**

5 7.1. The Attorney General may, after meeting and conferring with Settling Defendant, by
6 motion or application for an order to show cause before this Court, enforce the terms and conditions
7 contained in this Consent Judgment. In any such proceeding, the Attorney General may seek
8 whatever fines, costs, penalties, or remedies are provided by law for failure to comply with the
9 Consent Judgment and where said violations of this Consent Judgment constitute subsequent
10 violations of Proposition 65 or other laws independent of the Consent Judgment and/or those
11 alleged in the Complaint, the Attorney General is not limited to enforcement of the Consent
12 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies are provided
13 for by law for failure to comply with Proposition 65 or other laws. In any action brought by the
14 Attorney General alleging subsequent violations of Proposition 65 or other laws, Settling Defendant
15 may assert any and all 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 authorized
18 by the party he or she represents to stipulate to this Consent Judgment and to enter into and execute
19 the Consent Judgment on behalf of the party represented and legally to bind that party.

20 **9. CLAIMS COVERED**

21 9.1. This Consent Judgment is a full, final, and binding resolution between the People
22 and Settling Defendant, of any violation of Proposition 65 or its implementing regulations, Business
23 & Professions Code sections 17200 et seq., or any other statutory or common law claims that have
24 been or could have been asserted in the Complaint against Settling Defendant for failure to provide
25 clear and reasonable warnings of exposure to acrylamide from the consumption of the Covered
26 Products, or any other claim based on the facts or conduct alleged in the Complaint as to such
27 Products, whether based on actions committed by Settling Defendant or by any entity to whom they
28 distribute or sell Covered Products, or any entity that sells the Covered Products to consumers

1 except for sales of Covered Products by retailers during any period in which such retailers have not
2 posted signs sent to them pursuant to section 3.4(d). Provided, however, that Other Branded Chips,
3 are Covered Products under this paragraph only through the end of the negotiation period identified
4 in Section 5, unless the Consent Judgment is modified to include them as Covered Products. In the
5 event that the Parties submit a stipulation to the Court pursuant to Section 5 above, such period
6 shall extend until (i) a final order is issued by the Court or (ii) 30 days after the Court denies the
7 stipulation for modification. With this one exception, as to Covered Products, compliance with the
8 terms of this Consent Judgment resolves any issue now, in the past, and in the future concerning
9 compliance by Settling Defendant, its parents, shareholders, divisions, subdivisions, subsidiaries,
10 sister companies, affiliates, cooperative members, licensees, agents and representatives; their
11 distributors, brokers, wholesalers, and retailers who sell Covered Products; and the officers,
12 directors, employees, attorneys, agents, representatives, predecessors, successors, and assigns of
13 any of them, with the requirements of Proposition 65 and its implementing regulations.

14 **10. RETENTION OF JURISDICTION**

15 10.1. This Court shall retain jurisdiction of this matter to implement the Consent
16 Judgment.

17 **11. PROVISION OF NOTICE**

18 11.1. When any party is entitled to receive any notice under this Consent Judgment, the
19 notice shall be sent by overnight courier service to the person and address set forth in this
20 Paragraph. Any party may modify the person and address to whom the notice is to be sent by
21 sending each other party notice by certified mail, return receipt requested. Said change shall take
22 effect for any notice mailed at least five days after the date the return receipt is signed by the party
23 receiving the change.

24 11.2. Notices shall be sent by First Class Mail and/or overnight delivery to the following
25 when required:

26 For the Attorney General:

27 Edward G. Weil, Supervising Deputy Attorney General
28 1515 Clay Street, 20th Floor
Oakland, CA 94612

1 For Lance, Inc.:

2 Attn: General Counsel
3 Lance, Inc.
4 14120 Ballantyne Corporate Place
5 Suite 350
6 Charlotte, NC 28277

7 Michèle B. Corash, Esq.
8 Morrison & Foerster LLP
9 425 Market Street
10 San Francisco, CA 94105

11 **12. COURT APPROVAL**

12 12.1. This Consent Judgment shall be submitted to the Court for entry. If this Consent
13 Judgment is not approved by the Court, it shall be of no force or effect and may not be used by the
14 Attorney General, Settling Defendant, or any other person for any purpose whatsoever.

15 **13. ENTIRE AGREEMENT**

16 13.1. This Consent Judgment contains the sole and entire agreement and understanding of
17 the People, the Attorney General and Settling Defendant with respect to the entire subject matter
18 hereof, and any and all prior discussions, negotiations, commitments and understandings related
19 hereto. No representations, oral or otherwise, express or implied, other than those contained herein
20 have been made by any party hereto. No other agreements not specifically referred to herein, oral or
21 otherwise, shall be deemed to exist or to bind any of the parties.

22 13.2 This Consent Judgment is the result of mutual drafting and no ambiguity found
23 herein shall be construed in favor of or against any party.

24 **14. EXECUTION IN COUNTERPARTS**

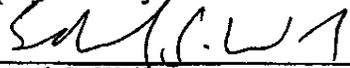
25 14.1. The stipulations to this Consent Judgment maybe executed in counterparts and by
26 means of facsimile, which taken together shall be deemed to constitute one document.
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IT IS SO STIPULATED:

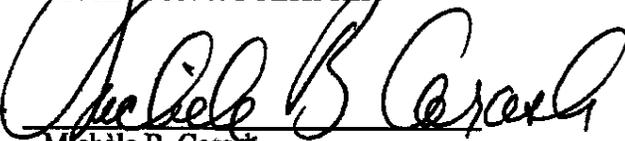
Dated: 7/30/08

EDMUND G. BROWN, JR.
Attorney General
EDWARD G. WEIL
Supervising Deputy Attorney General
LAURA ZUCKERMAN
DEBORAH SLON
Deputy Attorneys General

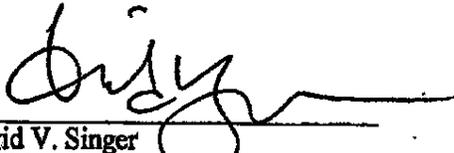
By: 
Edward G. Weil
Deputy Attorney General
For Plaintiffs People of the State of California

Dated: 7/30/08

MICHÈLE B. CORASH
MORRISON & FOERSTER

By: 
Michèle B. Corash
For Defendant Lance, Inc.

Dated: 7/30/08

By: 
David V. Singer
President and Chief Executive Officer
For Defendant Lance, Inc.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: 8/1/08


Hon. William F. Highberger
Judge of the Superior Court

Exhibit A

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

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

Lance, Inc. ("Lance") has entered into a consent judgment with the Attorney General for the State of California regarding the presence of acrylamide in frozen fry products sold by retailers in California.

Under the terms of this consent judgment, Lance is providing the enclosed sign warnings to retailers to be posted in retail stores selling any of the frozen products identified below in California. In the consent judgment, Lance 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 frozen potato products are sold. For stores less with 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 acknowledgement 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 Lance 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)

List of Products

1 Exhibit B

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

3 THIS COMMUNICATION APPLIES ONLY TO
4 RETAILERS LOCATED IN CALIFORNIA

5 On ____, Lance, Inc. ("Lance") sent you a letter enclosing sign warnings for posting in your
6 store(s) in California pursuant to a consent judgment entered into between Lance and the Attorney
7 General for the State of California regarding the presence of acrylamide in certain frozen fry
8 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 retail
11 space and no more than two cash registers, the sign may be placed at each cash register.
12 Additionally, stores that operate a customer service desk or similar central facility should also post
13 a sign at that location.

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

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