

ORIGINAL FILED

DEC 28 2011

LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ENVIRONMENTAL LAW FOUNDATION,

Plaintiff,

v.

ALBERTSONS, LLC; et al.,

Defendant.

Case No.: BC 384665

~~REVISID PROPOSED~~ CONSENT
JUDGMENT WITH FOODS CO.; FOOD 4
LESS OF CALIFORNIA, INC.; FOOD 4
LESS OF SOUTHERN CALIFORNIA,
INC.; THE KROGER COMPANY; FRED
MEYER STORES, INC., NEW
ALBERTSON'S, INC.; RALEY'S; RALPHS
GROCERY COMPANY; SAFEWAY INC.;
SAVE MART SUPERMARKETS; SMART
& FINAL STORES, LLC; STATER BROS.
MARKET; TRADER JOE'S COMPANY;
THE VONS COMPANIES, INC.; MRS.
GOOCH'S NATURAL FOOD MARKETS,
INC. AND WHOLE FOODS MARKET
CALIFORNIA, INC.

ENVIRONMENTAL LAW FOUNDATION,

Plaintiff,

v.

BIRDSEYE FOODS, INC. et al.

Defendant.

Date: December 28, 2011

Time: 10:00 a.m.

Dept: 309

Judge: Hon. Anthony J. Mohr

Complaint Filed: January 31, 2008

Case No.: BC 356591

RELATED CASE

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1. INTRODUCTION

1.1 On January 31, 2008, the Environmental Law Foundation (“Plaintiff”) filed a complaint for civil penalties and injunctive relief for alleged violations of Proposition 65 in the Superior Court for the County of Los Angeles naming twelve retailer defendants (the “Retailer Complaint”). The retailers who are currently defendants named or amended into the Retailer Complaint are: Foods Co.; Food 4 Less of California, Inc.; Food 4 Less of Southern California, Inc.; The Kroger Company; Fred Meyer Stores, Inc.; New Albertson’s, Inc.; Raley’s; Ralphs Grocery Company; Safeway Inc.; Save Mart Supermarkets; Smart & Final Stores, LLC; Stater Bros. Market; Trader Joe’s Company; The Vons Companies, Inc.; Mrs. Gooch’s Natural Food Markets, Inc.; and Whole Foods Market California, Inc. (collectively, the “Settling Retailer Defendants” or the “Retailers”).

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1.2 The Retailer Complaint alleges that the Settling Retailer Defendants violated the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6, also known as “Proposition 65,” by failing to provide clear and reasonable warnings that ingestion of identified potato chip products sold or distributed by the Retailers would expose consumers to acrylamide, a chemical listed by the State of California as known to cause cancer under Proposition 65. The Retailer Complaint was deemed “related” to the case *Environmental Law Foundation v. Birdseye Foods, et al.*, Case No. BC 356591 pursuant to California Rules Court Rule 3.300 et seq. (the “Birdseye Action”). The Birdseye Action, filed on August 6, 2006, sought civil penalties and injunctive relief for violations of Proposition 65 against six named manufacturers, and alleged that each manufacturer defendant failed to provide clear and reasonable warnings that ingestion of potato chip products they manufactured would result in exposure to acrylamide. Both of the related cases (“Related Cases”) were assigned to the Honorable Anthony J. Mohr, Judge of the Los Angeles County Superior Court.

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1.3 Since August 26, 2005, the Attorney General for the State of California (“Attorney General”) has also prosecuted Proposition 65 enforcement actions in Department 307 of this Court against defendants Procter & Gamble Manufacturing Company, Procter & Gamble Distributing

1 Company (collectively "Procter & Gamble"), Frito-Lay, Inc., Lance, Inc., and Kettle Foods, Inc.,
2 arising from the alleged presence of acrylamide in those companies' sliced potato chips and
3 restructured potato crisps, in a case captioned *People of the State of California v. Frito-Lay, Inc., et*
4 *al.*, Case No. BC 338956 (the "AG Action"). None of the defendants in the AG Action were named
5 in the Related Cases. By August 1, 2008, the Court entered consent judgments against all
6 manufacturer defendants in the AG Action, resolving the Attorney General's claims against Procter
7 & Gamble, Frito-Lay, Inc., Lance, Inc., and Kettle Foods, Inc. (the "AG Settlements"). The AG
8 Settlements included injunctive relief containing numerical acrylamide concentration targets and
9 compliance dates for the reduction of acrylamide levels in the sliced and restructured potato chips at
10 issue in the AG Action, and also set forth warning requirements for such products that do not meet
11 those targets by the compliance dates. The target compliance date in the AG Settlements for potato
12 crisp products is April 30, 2011, and the target compliance date for sliced potato chip products is
13 December 31, 2011. Included in the AG Settlements are provisions that permit the settling
14 manufacturers to provide Proposition 65 warnings for their noncompliant products through the use
15 of warning signs ("AG signage") in retail establishments in lieu of other warnings (i.e., on the
16 product labels) after December 31, 2011.¹

17 1.4 On May 19, 2009 and December 1, 2009 this Court entered Consent Judgments
18 pursuant to Proposition 65 resolving claims made by Plaintiff against all manufacturers in the
19 Birdseye Action (the "Birdseye Settlements"). The Birdseye Settlements adopt the AG Settlements'
20 numerical acrylamide concentration targets and compliance dates for reduction of acrylamide
21 levels. The settling manufacturers in the AG Action and the Birdseye Action are collectively
22
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24 ¹ The language of AG Signage would not necessarily identify which brands, flavors or variants of
25 potato chip or crisp products are being warned about. While Plaintiff would not ordinarily view
26 such signage as satisfying the warning requirements of Proposition 65, Plaintiff acknowledges that:
27 (1) by order of the court in the AG Action, such signage satisfies the Proposition 65 warning
28 requirements for the potato chips and crisps at issue in that case; and (2) such signage might also act
as a warning for all potato chips and crisps, including those referenced in this settlement. Therefore,
for purposes of resolving this case only, Plaintiff accepts and agrees that the AG Signage will
satisfy the Settling Retailer Defendants' obligation to provide a Proposition 65 warning when
provided at the time and in the manner described in the AG Settlements.

1 referred to hereafter as the “Settling Manufacturers,” and the settlements in those actions are
2 collectively referred to hereafter as the “Manufacturer Settlements.”

3 1.5 Plaintiff and the Settling Retailer Defendants now agree in this proposed Consent
4 Judgment to resolve Plaintiff’s claims in the Retailer Complaint by adopting acrylamide
5 concentration targets and compliance dates for reduction of acrylamide levels similar to those in the
6 AG Settlements, and permitting warnings by various means including the use of AG Signage.
7 Some of the Settling Retailer Defendants have reserved their right to object to the Settling
8 Manufacturers sending warning signs to the Retailers as a means of complying with their warning
9 obligations under the Manufacturer Settlements, at such time as those Settling Manufacturers may
10 attempt to satisfy their warning obligations by sending the Retailers warning signs. The Parties
11 hereto agree that the Settling Retailer Defendants do not in any way waive or compromise the rights
12 they have reserved pursuant to their reservation of rights by agreeing to settle this action pursuant to
13 the terms herein.

14 1.6 Settling Retailer Defendants are corporations that employ more than 10 persons, and
15 at some time relevant to the allegations in the Retailer Complaint sold potato chips and restructured
16 potato crisp products in California that are the subject of the Retailer Complaint.

17 1.7 The products covered under this Consent Judgment are all those sliced potato chips
18 (“Chip Products”) and restructured potato crisps (“Crisp Products”) sold by the Settling Retailer
19 Defendants in California including, but not limited to, those specific products that were identified in
20 Plaintiff’s 60-day notices of violation attached as Exhibit A hereto, sent to, *inter alia*, the Settling
21 Retailer Defendants and the Attorney General, pursuant to Health and Safety Code section 25249.7
22 (collectively “Covered Product(s)"). For purposes of this Consent Judgment, “Chip Products” are
23 potato chips made from sliced potatoes, whereas “Crisp Products” are all other potato based chip
24 products that are not made from sliced potatoes.

25 1.8 For purposes of this Consent Judgment only, Plaintiff and the Settling Retailer
26 Defendants (collectively, the “Parties”) stipulate that this Court has jurisdiction over the alleged
27 violations contained in the Retailer Complaint, personal jurisdiction over the Settling Retailer
28 Defendants as to the acts alleged in the Retailer Complaint, that venue is proper in the County of

1 Los Angeles, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
2 resolution of all claims which were or could have been raised against the Settling Retailer
3 Defendants in the Retailer Complaint based on the facts alleged therein and in Plaintiff's 60-day
4 notices.

5 1.9 Plaintiff and the Settling Retailer Defendants enter into this Consent Judgment as a
6 full and final settlement of all claims against the Settling Retailer Defendants relating to Covered
7 Products arising from the alleged failure to warn regarding the presence of acrylamide in such
8 Covered Products. Settling Retailer Defendants deny the material factual and legal allegations
9 contained in the Retailer Complaint and maintain that all Covered Products they have sold in
10 California have been and are in compliance with all laws including Proposition 65. Nothing in this
11 Consent Judgment, including the Settling Retailer Defendants' execution of this Consent Judgment
12 and agreement to provide the relief and remedies specified herein, shall be construed as an
13 admission by the Settling Retailer Defendants of any fact, finding, issue of law, or violation of law,
14 nor shall compliance with this Consent Judgment constitute or be construed as an admission by the
15 Settling Retailer Defendants of any fact, finding, conclusion, issue of law, or violation of law, such
16 being specifically denied by the Settling Retailer Defendants. The Settling Retailer Defendants do
17 not admit that the chemical acrylamide in food poses any risk to human health. This Consent
18 Judgment shall not be admissible in any action or proceeding except for proceedings to enforce or
19 modify this Consent Judgment as set forth herein. However, this Section shall not diminish or
20 otherwise affect the Settling Retailer Defendants' obligations, responsibilities and duties to comply
21 with this Consent Judgment. As set forth in Section 11 of this Consent Judgment, other retailers
22 and/or manufacturers who have not been noticed or sued for alleged violations of Proposition 65
23 may opt-in to this settlement by agreeing to the terms as set forth herein.

24 1.10 The effective date of this Consent Judgment shall be the date on which the Consent
25 Judgment is entered as a judgment by the Court ("Effective Date").

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

27 Unless warnings are given pursuant to Section 3 below, the Settling Retailer Defendants
28 shall, after December 31, 2011 (the "Warning Date"), sell in California only those Covered

1 Products for which they have written supplier assurance that the products contain levels of
2 acrylamide that do not exceed the following reformulation levels: 281.6 parts per billion (“ppb”) for
3 Chip Products (“Chip Target Level”) and 490 ppb for Crisp Products (“Crisp Target Level”)
4 (collectively, the Chip Target Level and Crisp Target Level are referred to hereafter as the “Target
5 Levels”).² “Sell in California” and “Sold in California” means sale in California at Settling Retailer
6 Defendants’ stores, or sale by a Settling Retailer Defendant to a third party that a Settling Retailer
7 Defendant knows will sell the Covered Product in California.

8 3. INJUNCTIVE RELIEF: CLEAR AND REASONABLE WARNINGS

9 3.1 For any Settling Retailer Defendant that does not have a written supplier assurance
10 that a supplier’s Covered Product meets the applicable Target Levels by the Warning Date, and
11 until such supplier provides written assurance that it meets the applicable Target Level for its
12 Covered Product(s), each such Settling Retailer Defendant shall comply with this Consent Judgment
13 by ensuring that for any such Covered Products sold in California, either:

14 (a) a warning label is placed on the package of each such Covered Product until the
15 Settling Retailer Defendant receives written assurance from the supplier that the applicable Target
16 Level has been achieved for that Covered Product. The warning label for each such Covered
17 Product that is sold in California shall either contain the language set forth in Section 3.1(b) below,
18 or conform to the requirements for the “safe harbor” warning methods set out in California Code of
19 Regulations, title 27, section 25603.2(a), while also stating that acrylamide is the chemical in
20 question known to the State of California to cause cancer and reproductive toxicity; or

21 (b) a warning is provided for such Covered Products by posting a warning sign where
22 such Covered Products are sold stating as follows:

23 WARNING: This product contains acrylamide, a chemical known to
24 the State of California to cause cancer and reproductive toxicity.
25 Acrylamide is not added to the products, but is created by browning
26 potatoes. The FDA does not recommend that people stop eating
potatoes. For more information, see the FDA’s website at
www.fda.gov.

27 ² The Target Levels must be met pursuant to the testing methodology adapted from the AG
28 Settlements and described in Exhibit D hereto, except where a higher level is set through
application of section 5.2(a)(i) or section 5.2(b)(i) below.

1 (c) or by not selling or offering for sale such Covered Product in California.

2 3.2 (a) Modification of Warning Language. If, after the Warning Date, any of the
3 Settling Manufacturers are providing Proposition 65 warnings using language set forth in one of the
4 Manufacturer Settlements or otherwise agreed to by the Attorney General, any Settling Retailer
5 Defendant may use the same warning language as that provided by such Settling Manufacturer.

6 (b) Effect of Prior Signage. To the extent that warnings are being provided by any of the
7 Settling Manufacturers via signs posted in retail stores or other methods that comply with the
8 Manufacturer Settlements, the Settling Retailer Defendants may rely on such signage and/or
9 warnings to satisfy their warning obligations for Covered Products under this Consent Judgment.

10 3.3 Nothing in this Consent Judgment requires the Settling Retailer Defendants to give
11 warnings for Covered Products that the Settling Retailer Defendants do not offer for sale in
12 California, or for any Covered Product the Settling Retailer Defendants offer for sale or sell at a
13 retail location outside the State of California.

14 3.4 If a Settling Retailer Defendant receives at any time a written supplier assurance that
15 the applicable Target Levels have been achieved for any of the Covered Products that had
16 previously required a warning under Sections 2 and 3, that Settling Retailer Defendant may cease
17 providing warnings for that Covered Product..

18 4. SETTLEMENT PAYMENTS

19 4.1 There are nine Settling Retailer Defendants who are each individually obligated
20 under this Consent Judgment to make a settlement payment to Plaintiff in the amount of \$30,000
21 ("Settlement Proceeds"). The \$30,000 settlement payment by certain of the nine Settling Retailer
22 Defendants is also on behalf of certain affiliates named as defendants in this action as indicated
23 below, with such named affiliates having no payment obligation hereunder. The nine Settling
24 Defendants who are each individually obligated to make a \$30,000 settlement payment hereunder
25 are as follows, with named affiliates (if any) covered by that payment indicated as follows: (1) New
26 Albertson's, Inc.; (2) Ralphs Grocery Company, Kroger, Food for Less, Foods Co. and Fred Meyer;
27 (3) Safeway Inc. and The Vons Companies, Inc.; (4) Save Mart Supermarkets; (5) Raley's; (6)
28 Trader Joe's Company; (7) Stater Bros. Market; (8) Smart & Final Stores, LLC; and (9) Whole

1 Foods Market California, Inc. and Ms. Gooch's. Settling Retailer Defendants obligated to make a
2 \$30,000 settlement payment hereunder are individually responsible for their own settlement
3 payment, and have no responsibility for the settlement payment of any other Settling Retailer
4 Defendant. Settlement Proceeds shall be made payable to Plaintiff and delivered to one of
5 Plaintiff's counsel, Rose, Klein & Marias LLP, 801 S. Grand Avenue, 11th Floor, Los Angeles,
6 California 90017-4645, or by wire transfer pursuant to Plaintiff's instruction, within ten (10)
7 business days after the Effective Date, and shall be applied as follows:

8 (a) Civil Penalty. Each of the nine Settling Retailer Defendants identified in Section 4.1
9 above shall pay civil penalties pursuant to Health & Safety Code section 25249.12 in the amount of
10 \$6,000.00 allocated between Plaintiff and the State of California as directed by Health & Safety
11 Code section 25249.12(c)-(d).

12 (b) Attorneys' Fees and Costs: Each of the nine Settling Retailer Defendants identified
13 in Section 4.1 above shall pay \$24,000 to reimburse Plaintiff for its attorneys' fees and costs
14 incurred in investigating this matter and negotiating this Consent Judgment on behalf of itself and
15 the general public.

16 5. MODIFICATION OF CONSENT JUDGMENT

17 5.1 This Consent Judgment may be modified by written agreement of Plaintiff and one
18 or more of the Settling Retailer Defendants, after noticed motion, and upon entry of a modified
19 consent judgment by the Court thereon, or upon motion of the Plaintiff or any Settling Retailer
20 Defendant as provided by law and upon entry of a modified consent judgment by the Court. Before
21 filing a motion with the Court to modify this Consent Judgment, the affected Settling Retailer
22 Defendant(s) and/or Plaintiff shall meet and confer to determine whether the other Parties will
23 consent to the proposed modification, and shall submit any proposed modification to the California
24 Attorney General for comment with a copy to all other Settling Retailer Defendants. If a proposed
25 modification is agreed upon between the Settling Retailer Defendant(s) and Plaintiff, then the
26 Settling Retailer Defendant(s) and the Plaintiff will jointly present the modification to the Court by
27 means of a stipulated modification to the Consent Judgment, provided that any Settling Retailer
28 Defendant who is not a party to the stipulation is provided notice and an opportunity to object.

1 5.2 Other Settlements.

2 (a) Settling Retailer Defendants and Opt-In Retailers.

3 (i) If Plaintiff or the Attorney General agree or have agreed to terms in a
4 settlement or judicially entered consent judgment with any manufacturer of Covered Products
5 which, as drafted or as implemented, are (i) materially more beneficial than those set forth in this
6 Consent Judgment as to the time of compliance, or (ii) allow Covered Products with a higher Target
7 Level to be shipped for sale and/or sold in California without a warning, the Parties stipulate that
8 this Consent Judgment will be modified to correspond to such terms as provided in such other
9 settlement or judicially entered consent judgment, at the Settling Retailer Defendants or Opt-In
10 Retailers' option, without need to seek a formal modification of this Consent Judgment.

11 (ii) If Plaintiff or the Attorney General agree or have agreed in a settlement or
12 judicially entered consent judgment that some or all Covered Products do not require a warning
13 under Proposition 65 (based on the presence of acrylamide), or if a court of competent jurisdiction
14 renders a final judgment and the judgment becomes final, that some or all Covered Products do not
15 require a warning for acrylamide under Proposition 65 for products that have acrylamide levels in
16 excess of the Target Levels, then any Settling Retailer Defendant or Opt-In Retailer may cease
17 warning for such Covered Product, or cease warning for such Covered Product up to the levels of
18 acrylamide adjudged not to require a warning, as the case may be, without seeking a formal
19 modification of this Consent Judgment.

20 (b) Opt-In Suppliers.

21 (i) If Plaintiff agrees or has agreed in a settlement or judicially entered consent
22 judgment with another defendant to this action or if the Attorney General has entered into a
23 settlement or judicially entered consent judgment with any sliced potato chip or restructured potato
24 crisp manufacturer in the AG Action on terms, as drafted or as implemented, that (i) are materially
25 more beneficial than those set forth in this Consent Judgment as to the time of compliance, or (ii)
26 allow a sliced potato chip product with an acrylamide concentration higher than 281.6 ppb or a
27 restructured chip with a concentration higher than 490 ppb to be shipped for sale and/or sold in
28 California without a warning; then the Parties shall stipulate that this Consent Judgment will be

1 modified to correspond to such terms as provided in such other settlement or judicially entered
2 consent judgment.

3 (ii) If Plaintiff in this action, or the Attorney General in the AG Action agrees or
4 has agreed in a settlement or judicially entered consent judgment that some or all Products (as sold
5 by other companies) do not require a warning under Proposition 65 (based on the presence of
6 acrylamide), or if a court of competent jurisdiction renders a final judgment and the judgment
7 becomes final, that some or all Products (as sold by other companies) do not require a warning for
8 acrylamide under Proposition 65 for products that have acrylamide levels in excess of those defined
9 herein, then any Opt-In Supplier may seek a modification of this Consent Judgment to eliminate its
10 duties to warn and/or other duties related to the reduction of acrylamide levels, up to the levels of
11 acrylamide determined adjudged not to require a warning.

12 5.3 If an agency of the federal government, including, but not limited to the U.S. Food
13 and Drug Administration, states through regulation or other legally binding act, that federal law
14 precludes or preempts any Settling Retailer Defendant from providing any of the warnings set forth
15 in this Consent Judgment or the methodology for providing such warnings, such Settling Retailer
16 Defendant may seek to modify this Consent Judgment to bring the warnings hereunder into
17 compliance with federal law, but the modification shall not be granted unless this Court concludes,
18 in a final judgment or order, that federal law precludes the Settling Retailer Defendant from
19 providing warnings as set forth in this Consent Judgment. A determination that the provision of
20 some, but not all, forms or methodologies of warning described in Section 3 above is not permitted
21 shall not relieve the Settling Retailer Defendants of the duty to provide one of the other forms or
22 methodologies of warnings described under this judgment for which such determination has not
23 been made.

24 5.4 If Proposition 65 or its implementing regulations are changed from their terms as
25 they exist on the date of entry of this Consent Judgment, the Parties may jointly or separately seek
26 modification of this Consent Judgment through stipulation or noticed motion, which shall be
27 granted upon demonstration of such changes, as follows:
28

1 (a) If the change establishes that warnings for acrylamide in some or all Covered
2 Products are not required, any Settling Defendant may seek a modification of this Consent
3 Judgment to eliminate its duties to warn and/or obtain written supplier assurances for Covered
4 Products.

5 (b) If the change establishes that the warnings provided by this Consent Judgment would
6 not comply with Proposition 65 or its implementing regulations, any Party may seek a modification
7 of the Consent Judgment to conform the judgment to the change in law.

8 (c) If the change would provide a new form, manner, or content for an optional or safe-
9 harbor warning, any or all Settling Retailer Defendants shall meet and confer with Plaintiff and,
10 following agreement, apply to the Court for approval of a plan for implementing warnings in such
11 manner. In the event the Parties cannot agree on a joint plan, any Settling Retailer Defendant may
12 nonetheless apply to the Court to replace any warning obligation hereunder with the new safe-
13 harbor warning, and Plaintiff shall be free to oppose such motion.

14 6. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

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

18 7. CLAIMS COVERED

19 7.1 This Consent Judgment is a full, final, and binding resolution between the Plaintiff,
20 acting on behalf of the general public, and the Settling Retailer Defendants and their parents,
21 shareholders, divisions, subdivisions, subsidiaries, franchisees, sister companies, affiliates,
22 successors, assigns, cooperative members, licensees, agents and representatives, of any violation of
23 Proposition 65 or its implementing regulations, or any other statutory or common law claims that
24 have been or could have been asserted in the Retailer Complaint against the Settling Retailer
25 Defendants or Plaintiff's 60-day Notices, for failure to provide clear and reasonable warnings of
26 exposure to acrylamide from the handling or consumption of Covered Products, or any other claim
27 based on the facts or conduct alleged in the Retailer Complaint or Plaintiff's 60-day Notices.
28 Compliance with the terms of this Consent Judgment resolves any issue now, in the past, and in the

1 future concerning compliance by the Settling Retailer Defendants and their parents, shareholders,
2 divisions, subdivisions, subsidiaries, franchisees, sister companies, affiliates, successors, assigns,
3 cooperative members, licensees, agents and representatives, and their distributors, brokers,
4 wholesalers, and retailers who sell Covered Products, and the officers, directors, employees,
5 attorneys, agents, representatives, predecessors, successors, and assigns of any of them, with the
6 requirements of Proposition 65 and its implementing regulations with respect to Covered Products.

7 7.2 Subject to Section 7.3, this Consent Judgment is also a full, final, and binding
8 resolution of any violation of Proposition 65 or its implementing regulations, or any other statutory
9 or common law claims that have been or could have been asserted in the Retailer Complaint or
10 Plaintiff's 60-day Notices, against the manufacturers, vendors or suppliers of those Covered
11 Products that the Settling Retailer Defendants sell under the Settling Retailer Defendants' house
12 brand (also known as "private label") for failure to provide clear and reasonable warning of
13 exposure to acrylamide from the consumption of those Covered Products, or any other claims based
14 on the facts or conduct alleged in the Retailer Complaint as to those products.

15 7.3 Other than the upstream supplier release for house brand (private label) products
16 provided in section 7.2 above, and the release for Opt-In Suppliers provided by Section 7.1 above,
17 the foregoing release of claims shall not run in favor of, nor be construed to release in whole or in
18 part, the upstream liability of any of the Settling Retailer Defendants' manufacturers, importers,
19 distributors ("Suppliers") of any other Covered Product besides the house brand (private label) sold
20 by the Settling Retailer Defendants.

21 7.4 Each Settling Retailer Defendant shall, before this Consent Judgment is entered, send
22 a notice to Plaintiff identifying all brands and Suppliers of Covered Products that the Settling
23 Retailer Defendant has sold within the period from one year prior to the filing of the Retailer
24 Complaint against it in this action through the date of execution below. Each Settling Retailer
25 Defendant shall use reasonable diligence and good faith efforts to identify all brands and Suppliers
26 of such covered products in the notice sent to Plaintiff hereunder.

27 **8. RETENTION OF JURISDICTION**

1 8.1 This Court shall retain jurisdiction of this matter to implement this Consent
2 Judgment.

3 **9. PROVISION OF NOTICE**

4 9.1 When any party is entitled to receive any notice under this Consent Judgment, the
5 notice shall be sent by overnight courier service to the person and address set forth in this Section.
6 Any party may modify the person and address to whom the notice is to be sent by sending each
7 other party notice by certified mail or overnight courier service, return receipt requested. Said
8 change shall take effect for any notice mailed beginning five days after the date the return receipt is
9 signed by the party receiving the change.

10 9.2 Notices shall be sent by First Class Mail and/or overnight delivery to the following
11 when required:

12 For Plaintiff:

13 James R. Wheaton, Esq.
14 Lynne R. Saxton, Esq.
15 Environmental Law Foundation
16 1736 Franklin Street, 9th Floor
17 Oakland, CA 94612

18 David A. Rosen, Esq.
19 Rose, Klein & Marias LLP
20 801 South Grand Avenue, 11th Floor
21 Los Angeles, CA 90017

22 For New Albertson's:

23 Ms. Machele Poole
24 New Albertsons, Inc.
25 250 Parkcenter Blvd.
26 P.O. Box 20
27 Boise, ID 83706

28 With copy to:

 James Robert Maxwell
 Rogers Joseph O'Donnell
 311 California Street, 10th Floor
 San Francisco, CA 94104

For Save Mart Super Markets:

 James M. Cipolla, Esq.
 Vice President and General Counsel
 Save Mart Supermarkets
 1800 Standiford Avenue

1 P.O. Box 3689
2 Modesto, CA 95352

3 With copy to:

4 James Robert Maxwell
5 Rogers Joseph O'Donnell
6 311 California Street, 10th Floor
7 San Francisco, CA 94104

8 For Safeway Inc.:

9 Valerie D. Lewis, Esq.
10 Senior Corporate Counsel
11 5918 Stoneridge Mall Road
12 Pleasanton, CA 94588-3229

13 With copy to:

14 Trenton H. Norris
15 Arnold & Porter LLP
16 One Embarcadero Center, 22nd Floor
17 San Francisco, CA 94111

18 For The Vons Companies, Inc.

19 Valerie D. Lewis, Esq.
20 Senior Corporate Counsel
21 5918 Stoneridge Mall Road
22 Pleasanton, CA 94588-3229

23 With copy to:

24 Trenton H. Norris
25 Arnold & Porter LLP
26 One Embarcadero Center, 22nd Floor
27 San Francisco, CA 94111

28 For Mrs. Gooch's and WFM California, Inc.:

John H. Hempfling II, Esq.
Global Litigation Counsel
Whole Foods Market Central Office
550 Bowie Street
Austin, Texas 78703

With copy to:

Jay W Connolly, Esq.
Seyfarth Shaw LLP
560 Mission Street, 31st Floor
San Francisco, CA 94105

For Trader Joe's Company:

Bryan Palbaum

1 Executive V.P. Finance & Administration
2 P.O. BOX 5049; 800 South Shamrock Ave.
3 Monrovia, CA 91016-6346

4 With copy to:

5 Carla J. Christofferson
6 O'Melveny & Myers LLP
7 400 South Hope Street Los Angeles,
8 CA 90071

9 For Smart & Final:

10 Donald G. Alvarado
11 Senior Vice President/General Counsel
12 Smart & Final Stores LLC
13 600 Citadel Drive
14 Commerce, California 90040

15 For Stater Brothers:

16 Bruce Varner, General Counsel
17 Varner & Brandt
18 3750 University Avenue I Suite 610
19 Riverside, CA 92501-3323

20 For Ralphs Grocery Company:

21 Steve Prough
22 Vice President, Legal Services
23 Ralphs Grocery Company
24 Food 4 Less/Foods Co
25 P.O. Box 54143
26 Los Angeles CA 90054

27 With copy to:

28 Lisa Cole, Esq.
29 2 Palo Alto Square
30 3000 El Camino Real, Suite 500
31 Palo Alto, CA 94306-2106

32 10. ENFORCEMENT

33 10.1 Before moving to enforce the terms and conditions of this Consent Judgment with
34 respect to an alleged violation hereof or of Proposition 65 related to acrylamide in Covered
35 Products, Plaintiff or any other person acting in the public interest under Health & Safety Code §
36 25249.7(d) must follow these procedures:
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1 (a) In the event that Plaintiff, and/or its attorneys, agents or assigns, or any other person
2 acting in the public interest under Health & Safety Code § 25249.7(d), identify Covered Products
3 being sold after the Warning Date at one or more retail stores in California owned and operated by
4 any of the Settling Retailer Defendants (hereinafter “retail outlet”) that do not meet the Target
5 Levels set forth in Section 2 herein and for which the warnings under Section 3 of this Consent
6 Judgment are not being given, Plaintiff or such person shall notify the Settling Retailer Defendant in
7 writing within 15 days of the date Plaintiff or such other person was informed of or observed the
8 alleged violation (the “Probationary Notice of Default”). The Probationary Notice of Default shall
9 be sent to the person(s) identified pursuant to Section 9 herein. The Probationary Notice of Default
10 shall at a minimum set forth the date(s) the alleged violation(s) was observed, the retail outlet(s) in
11 question, any supporting test data, identify the Covered Products giving rise to the alleged
12 violation(s), and describe the alleged violation(s) with sufficient detail to allow the Settling Retailer
13 Defendant to determine the basis of the claim being asserted and the identities of the Covered
14 Products to which those assertions apply. The Probationary Notice of Default shall allege all
15 violations that could have been raised with respect to each retail outlet in question as of the date of
16 the Probationary Notice of Default.

17 (b) In the event the Settling Retailer Defendant corrects the alleged violation(s) within
18 sixty (60) days of receiving the Probationary Notice of Default, Plaintiff or any other notifying
19 person shall take no further enforcement action with respect to such violation(s) under either this
20 Consent Judgment, Proposition 65 or any other law.

21 (c) In the event that the Settling Retailer Defendant fails to cure and correct the
22 violation(s) within sixty (60) days of receiving the Probationary Notice of Default, the Settling
23 Retailer Defendant shall pay to Plaintiff or the notifying person, as a stipulated penalty for failure to
24 remedy the alleged violation(s), the collective amount of one thousand dollars (\$1,000) pursuant to
25 Health & Safety Code § 25249.7(b) for each retail outlet which was the subject of the Probationary
26 Notice of Default.

27 (d) In the event the Settling Retailer Defendant wishes to contest the allegations
28 contained in any Probationary Notice of Default, it shall notify Plaintiff or the notifying person of

1 such in writing within thirty (30) days of its receipt of the Probationary Notice of Default. The
2 Settling Retailer Defendant may provide any evidence to Plaintiff or the notifying person in support
3 of its position. In the event that, upon a good faith review of the evidence, Plaintiff or the notifying
4 person agree with the Settling Retailer Defendant's position, no further action shall be taken. In the
5 event the Settling Retailer Defendant provides evidence, and Plaintiff or the notifying person
6 disagrees with the Settling Retailer Defendant's position, it shall, within thirty (30) days, notify the
7 Settling Retailer Defendant of such and provide the Settling Retailer Defendant, in writing, with the
8 reasons for its disagreement. Thereafter, the parties shall meet and confer to attempt to resolve their
9 dispute on mutually acceptable terms; if no such resolution results, Plaintiff may seek to enforce the
10 terms and conditions contained in this Consent Judgment.

11 **11. OPT-IN PROCEDURES**

12 11.1 This Consent Judgment is entered into with the intention that it also provide a basis
13 by which any other retailer ("Opt-In Retailer"), or manufacturer, supplier, or importer ("Opt-In
14 Supplier") whose Covered Products are sold in California (collectively "Opt-In Defendants") can
15 apply to enter into and, except as otherwise provided herein, be bound by the same injunctive relief,
16 notice, enforcement and release terms that apply to Settling Retailer Defendants under this Consent
17 Judgment as a defendant sued under the fictitious names of Does 1 through 100. The Parties
18 contemplate that this Court's approval of the Consent Judgment shall constitute approval of all
19 settlements reached on behalf of any and all parties who apply to be Opt-In Defendants in this
20 Action and become parties to this Consent Judgment, through this Section and the Opt-In
21 Declaration and Agreement attached hereto as Exhibit B. Accordingly, upon Court approval of the
22 this Consent Judgment, except as otherwise provided herein, any Opt-In Defendant shall be bound
23 by the same injunctive relief, notice, enforcement and release terms that apply to Settling Retailer
24 Defendants under this Consent Judgment.

25 11.2 An "Opt-In Retailer" is an entity that sells Covered Products directly to retail
26 consumers at a retail establishment it operates that is located in California, or that has sold such
27 products from another retail location it operates into California (as, for example, through a website),
28 but does not itself manufacture, supply, import, or license the sale of any Covered Products to or

1 through a retail establishment operated by any other entity. An "Opt-In Supplier" is any entity that
2 manufactures, supplies, imports, or licenses the sale of any Covered Products to or through its own
3 brands or a retail establishment operated by any other entity.

4 11.3 Any entity that identifies the Covered Products to be covered in an opt-in stipulation
5 may apply to be an Opt-In Defendant in this Action and a party to this Consent Judgment not later
6 than 90 days after the "Effective Date" ("Opt-In Period"), by executing an Opt-In Declaration and
7 Agreement in the form attached hereto as Exhibit B. Said entity shall be served with a 60 day
8 notice of violation identifying the products to be covered, pursuant to Health and Safety Code
9 section 25249.7. Plaintiff shall not unreasonably withhold approval of the Opt-In Defendant's
10 inclusion in this Consent Judgment. If accepted and the Opt-In Defendant performs all required
11 actions, such entity shall become subject to all of the requirements and benefits of this Consent
12 Judgment as set forth herein. For any Opt-In Defendants, the Opt-In Declaration and Agreement
13 shall:

14 11.3.1 Affirm that the entity sold (for Opt-In Retailers only), or sold, manufactured,
15 supplied, or distributed (for Opt-In Suppliers) in the State of California Covered Products during the
16 one year limitations period, and identify each such product;

17 11.3.2 Operate as the entities' acceptance of service of a summons and the
18 Complaint as a Doe defendant to be designated by Plaintiff;

19 11.3.3 Certify that the entity has read and agrees to be bound by all terms and
20 conditions of this Consent Judgment as set forth herein;

21 11.3.4 Certify that the entity will perform each and every obligation required of the
22 Settling Defendants under this Consent Judgment in a timely manner;

23 11.4 Opt-In Defendants shall mail the original signed Opt-In Declaration and Agreement
24 and a check for the settlement payment set forth in Sections 11.8(a) and (b) below, to Rose, Klein
25 and Marias LLP, as identified herein. The Opt-in Declaration and Agreement shall make
26 reasonable efforts to identify all Chip Products and Crisp Products covered by the Opt-in
27 stipulation, including a designation of whether each covered product is a Chip Product or a Crisp
28 Product (see Section 1.7 of this Consent Judgment for the distinction between the two). Following

1 Plaintiff's receipt of the Opt-in Declaration and Agreement, Plaintiff shall prepare and serve a 60-
2 day notice of alleged violation on the Opt-in defendant and the relevant public enforcers under
3 Health & Safety Code § 25249.7 covering the specified Opt-in products. At least 60 days after
4 Plaintiff serves the 60-day notice, Plaintiff shall file the Opt-In Declaration and Agreement with the
5 Court, pay the court appearance fee, serve a copy of the Opt-In Declaration and Agreement upon
6 the California Attorney General and any other relevant parties, and submit the Consent Judgment
7 and a verification of payment from Plaintiff to the Court by motion for approval in accordance with
8 the requirements of Health & Safety Code section 25249.7(f) and its implementing regulations.

9 11.5 Within the 45-day notice period for approval of the Opt-In Defendant any party
10 hereto may file and serve an objection, identifying the product the party believes is not properly
11 eligible to be included in this Consent Judgment. The Office of the Attorney General may file
12 comments within this same 45-day period. In the event of any disagreement, the Opt-in Defendant
13 and objecting party shall meet and confer and communicate the results thereof to the Court without
14 any requirement that Plaintiff renounce the motion to approve the settlement with the Opt-In
15 Defendant. If a dispute remains, it shall be resolved by the Court when it hears the noticed motion
16 to approve the settlement with the Opt-In Defendant.

17 11.6 Notice of the motion to approve the settlement to the Opt-in Defendant and all
18 parties to this action is hereby waived, except that Plaintiff shall serve a copy of the moving papers
19 on the Opt-in Defendant and all parties at the time the motion is filed. Pursuant to the motion, the
20 Court shall then conduct a hearing on the proposed Opt-in, resolve any disputes raised by a party
21 regarding proposed Covered Products or other items, and resolve any comments from the Attorney
22 General regarding the proposed Opt-in and proposed Covered Product(s). The Court can
23 memorialize its decision either in a written order or by minute Order which Plaintiff shall serve on
24 the involved parties. Following entry of the Court's ruling, if that ruling is an approval of the Opt-
25 in, the Opt-in Defendant shall be bound by all parts of this Consent Judgment, including the
26 obligations to either meet the Target Levels by the Warning Date set forth in Section 2, or provide
27 the product label warnings required under Section 3.1(a), or rely on the retail warnings (if any)
28 already being provided under Section 3.2(b) upon written confirmation of same, or cease offering

1 for sale in California Covered Products that do not comply with the Consent Judgment under
2 section 3.1(c). Opt-In Suppliers cannot comply with this Consent Judgment by sending retailers
3 warning signs under Section 3.1(b) or otherwise. Opt-In Suppliers approved by the Court shall be
4 released under Section 7 for all products identified pursuant to Section 11.3 as constituted and
5 manufactured on the date of the Order approving the Opt-In. If the Opt-In is rejected for all
6 products by Plaintiff or the Court, Plaintiff shall refund any settlement payments made under
7 Sections 11.8(a) and (b), less any court fees paid on the putative Opt-In Defendants' behalf.

8 11.7 If an Opt-In Supplier has demonstrated by testing pursuant to Exhibit C that it has
9 achieved the applicable Target Levels for any of the Covered Products that had previously required
10 a warning under Section 3, that Opt-In Supplier may cease providing such warning for those
11 products.

12 11.8 Opt-In Defendants shall pay to Plaintiff the sums stated below.

13 (a) Each Opt-In Retailer shall pay to Plaintiff the collective sum of \$30,000.
14 \$6,000 shall be designated as a civil penalty pursuant to Health and Safety Code section
15 25249.12 and allocated as directed by Health & Safety Code section 25249.12(c)-(d).
16 \$24,000 shall be paid to reimburse Plaintiff for attorneys' fees and costs incurred by Plaintiff
17 in investigating this matter and negotiating this Consent Judgment on behalf of itself and the
18 general public, and its costs associated with processing Opt-In Defendants.

19 (b) Each Opt-In Supplier shall pay to Plaintiff the collective sum of \$60,000.
20 \$12,000 shall be designated as a civil penalty pursuant to Health and Safety Code section
21 25249.12 and allocated as directed by Health & Safety Code section 25249.12(c)-(d).
22 \$48,000 shall be paid to reimburse Plaintiff for attorneys' fees and costs incurred by Plaintiff
23 in investigating this matter and negotiating this Consent Judgment on behalf of itself and the
24 general public, and its costs associated with processing Opt-In Defendants.

25 11.9 The total amount of Settlement Proceeds paid to reimburse Plaintiff for fees and
26 costs under subsections 11.8(a) and (b) shall not exceed the total of \$654,653.19 plus the total of
27 \$2,000 times the total number of Opt-In Defendants. If the payments by all Opt-In Defendants
28 exceeds that total, Plaintiff shall do either or both of the following:

1 (a) bring a noticed motion, with 45 days notice to the Attorney General, to
2 increase the total stated in this Section, justifying the additional time or expenses incurred in
3 processing the Opt-In procedures contained herein, or

4 (b) transfer any amount in excess of the total of \$654,653.19 to the California
5 Office of Environmental Health Hazard Assessment ("OEHHA") for use in administering
6 Proposition 65.

7 **12. COURT APPROVAL**

8 12.1 Plaintiff agrees to comply with the reporting requirements referenced in California
9 Health and Safety Code section 25249.7(f). Pursuant to the regulations promulgated under that
10 section, Plaintiff shall present this Consent Judgment to the California Attorney General's Office
11 within two (2) days after receipt of all necessary signatures.

12 12.2 The Parties acknowledge that, pursuant to Health and Safety Code section 25249.7,
13 a noticed motion must be filed to obtain judicial approval of this Consent Judgment. Accordingly,
14 Plaintiff shall file a motion for approval of the settlement within a reasonable period of time after
15 the date this agreement is signed by all parties. Plaintiff also agrees to serve a copy of the noticed
16 motion to approve and enter the Consent Judgment on the California Attorney General's Office,
17 consistent with the requirements set forth in California Code of Regulations, title 11, section
18 3000(a).

19 12.3 If this Consent Judgment is not approved by the Court, it shall be of no force or
20 effect and cannot be used in any proceeding for any purpose, and any settlement payments made to
21 Plaintiff hereunder shall be refunded in full upon any Settling Retailer Defendant's written request
22 to Plaintiff.

23 **13. ENTIRE AGREEMENT; MUTUAL DRAFTING**

24 13.1 This Consent Judgment contains the sole and entire agreement and understanding of
25 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
26 negotiations, commitments and understandings related hereto. No representations, oral or
27 otherwise, express or implied, other than those contained herein have been made by any party
28

1 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
2 to exist or to bind any of the parties.

3 13.2 This Consent Judgment is the result of mutual drafting and no ambiguity found
4 herein shall be construed in favor of or against any party.

5 **14. EXECUTION IN COUNTERPARTS**

6 14.1 The stipulation to this Consent Judgment may be executed in counterparts and by
7 means facsimile or pdf, which taken together shall be deemed to constitute one document.

8
9 IT IS SO ORDERED, ADJUDGED, AND DECREED:

10
11 Dated: DEC 28 2011

ANTHONY J. MOHR

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13 _____
14 Hon. Anthony J. Mohr
15 Judge of the Superior Court
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EXHIBIT A

NOTICES OF VIOLATION AND NON-EXCLUSIVE LIST OF PRODUCTS

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NOTICE OF VIOLATION
CONSUMER EXPOSURE TO ACRYLAMIDE IN POTATO CHIPS

60-Day Notice of Intent to Sue Under Proposition 65
for Failure to Warn Public About Chemicals Listed Under Health and Safety Code Section 25249
(California Safe Drinking Water and Toxic Enforcement Act)
June 18, 2007

This Notice of Violation is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d). Proposition 65 requires that notice of intent to sue be given to a violator 60 days before the suit is filed.

This Notice is provided by the Environmental Law Foundation ("ELF"), a California non-profit organization dedicated to the preservation and enhancement of human health and the environment. ELF has a long-standing interest in reducing health hazards to the public posed by toxic chemicals and protecting the public from harmful substances. Any inquiries regarding this Notice of Violation may be directed to James Wheaton, President of ELF, 1736 Franklin Street, 9th Floor, Oakland, CA 94612, (510) 208-4555. Inquiries may also be directed to Christopher P. Ridout, Rose, Klein & Marias LLP, 801 S. Grand Avenue, Eleventh Floor, Los Angeles, CA 90017-4645, (213) 626-0571.

This Notice constitutes notice that the entities identified in Exhibit 1 have violated and continue to violate the warning provisions of California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code §§ 25249.5, *et. seq.* (commonly referred to as "Proposition 65"). This Notice covers the "warning provision" of Proposition 65, which is found at California Health and Safety Code Section 25249.6. This Notice has been served on the entities identified in Exhibit 1 and the appropriate governmental authorities.

The businesses identified in Exhibit 1 have exposed and continue to expose consumers to Acrylamide, a chemical known to the State of California to cause cancer, without providing a clear and reasonable warning. The category of products that is the subject of this Notice is potato chips that contain Acrylamide which are manufactured, distributed or sold by the entities identified in Exhibit 1 ("Products Sold by Retailer Under the Following Brand Names").

Consumers are exposed to Acrylamide by eating potato chips that contain Acrylamide. The route of exposure for these violations is direct ingestion when consumers eat the Products. These exposures occur in homes, schools, workplaces and everywhere else throughout California where these Products are sold and/or consumed. No clear and reasonable warning is provided with these Products regarding the carcinogenic hazards of Acrylamide. These violations have been occurring since at least January 1, 1991 and are continuing to this day.

Pursuant to Health and Safety Code § 25249.7(d)(1), ELF included the attached Certificate of Merit, to wit, that ELF has consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding exposure to Acrylamide and that, based on that information, ELF believes that there is a reasonable and meritorious case. Factual information sufficient to establish the basis of the Certificate of Merit is

included with the Notice that is served on the Attorney General and is provided to that office in confidence and is not to be disclosed, except according to law.

For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, please see the attached Appendix A, entitled "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary", which was prepared by the Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency. (A copy is not provided to the public enforcement agencies which receive this notice.)

EXHIBIT 1 – List of Violators with Non-Exclusive Examples of the Products Sold
 NOTICE OF VIOLATION
 California Safe Drinking Water and Toxic Enforcement Act
 ACRYLAMIDE IN POTATO CHIPS, CRISPS AND STRINGS

Retailer/Responsible Corporate Entity	Products Sold by Retailer Under the Following Brand Names
NEW ALBERTSON'S	Albertson's (house brand) Pik-Nik Boulder Canyon Tim's Cascade Pringles Lay's Kettle Chips Cape Cod
ALBERTSON'S LLC.	Albertson's (house brand) Pik-Nik Boulder Canyon Tim's Cascade Pringles Lay's Kettle Chips Cape Cod
COSTCO WHOLESALE CORPORATION	Pringles Lay's
FOODS CO.	Kroger (house brand) Tim's Cascade Pringles Lay's
FOOD 4 LESS OF CALIFORNIA, INC.	Kroger (house brand) Tim's Cascade Pringles Lay's

FOOD 4 LESS OF SOUTHERN CALIFORNIA, INC.	Kroger (house brand) Tim's Cascade Pringles Lay's
FRED MEYER STORES, INC.	Kroger (house brand) Tim's Cascade Pringles Lay's
THE KROGER COMPANY	Kroger (house brand) Tim's Cascade Pringles Lay's Cape Cod
RALPH'S GROCERY COMPANY	Kroger (house brand) Tim's Cascade Pringles Lay's Cape Cod
SAFEWAY, INC.	Tim's Cascade Eat Smart Pik-Nik Terra Pringles Lay's Kettle Chips Cape Cod
THE VONS COMPANIES, INC.	Tim's Cascade Eat Smart Pik-Nik Terra Pringles Lay's Kettle Chips Cape Cod
RALBY'S, INC.	Terra Tim's Cascade Eat Smart Pik-Nik Pringles Lay's Kettle

SMART & FINAL, INC.	Tim's Cascade Pringles Lay's Kettle
STATER BROS. MARKET	Tim's Cascade Pik-Nik Pringles Lay's Cape Cod Poore Brothers
TRADER JOE'S COMPANY	Trader Joe's (house brand) Kettle
WHOLE FOODS MARKET, INC.	365 (house brand) Michael Season's Boulder Canyon Terra Kettle

CERTIFICATE OF MERIT

California Health and Safety Code Section 25249.7(d)

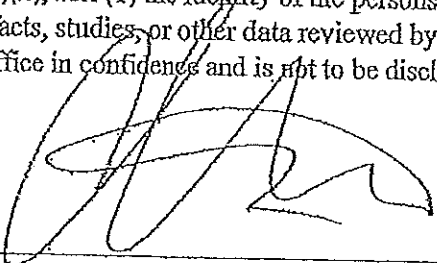
I, Christopher P. Ridout, hereby declare:

This Certificate of Merit accompanies the attached sixty-day Notice of Violation in which it is alleged that the parties identified in the Notice have violated Health and Safety Code §25249.6 by exposing individuals to a chemical known to the State of California to cause cancer without providing a clear and reasonable warning. This Certificate of Merit is submitted pursuant to and in compliance with California Health and Safety Code §25249.7(d).

I am the Attorney representing the Environmental Law Foundation ("ELF"), which is the party providing the Notice of Violation. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies or other data regarding the exposures to the listed chemical that is the subject of this Notice of Violation. Based on the information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violators will be able to establish any of the affirmative defenses set forth in the statute.

The copy of the Certificate of Merit that is served on the Attorney General includes factual information sufficient to establish the basis for this Certificate, including the information identified in Health & Safety Code §25249.7(h)(2), i.e.: (1) the identity of the persons consulted with and relied on by the certifier; and (2) the facts, studies, or other data reviewed by those persons. This information is provided to that office in confidence and is not to be disclosed, except according to law.

Dated: 18, 2007



Christopher P. Ridout
Attorney for Environmental Law Foundation

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

CERTIFICATE OF SERVICE BY MAIL

I, Terri A. Keller, declare that:

I am employed in Los Angeles County, California. I am over the age of 18 years and not a party to the within cause; my business address is 801 S. Grand Avenue, Eleventh Floor, Los Angeles, CA 90017-4645.

I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, to wit, that correspondence is deposited with the United States Postal Service the same day in the ordinary course of business.

On June 18, 2007, I served true copies of the following documents on the parties and governmental authorities listed in the attached service list by placing true and correct copies of the same in sealed envelopes with first class postage fully prepaid thereon and deposited in the United States Mail at Los Angeles, California:

NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT;

EXHIBIT 1 - LIST OF VIOLATORS WITH NON-EXCLUSIVE EXAMPLES OF THE PRODUCTS SOLD; and

CERTIFICATE OF MERIT;

APPENDIX A - THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY (only sent to those on service list marked with an asterisks).

I certify under penalty of perjury that the foregoing is true and correct, and that this certification was executed on June 18, 2006, at Los Angeles, California.

Signed:


TERRI A. KELLER

SERVICE LIST

District Attorney of Alameda County 1225 Fallon Street, Room 900 Oakland, CA 94612	District Attorney of Butte County 25 County Center Drive Oroville, CA 95965	District Attorney of Contra Costa County 725 Court Street, Room 402 Martinez, CA 94553
District Attorney of Fresno County 2220 Tulare Street, #1000 Fresno, CA 93721	District Attorney of Imperial County 939 Main Street El Centro, CA 92243	District Attorney of Kings County 1400 West Lacey Hanford, CA 93230
District Attorney of Los Angeles County 210 W. Temple Street, Room 345 Los Angeles, CA 90012	District Attorney of Mariposa County P.O. Box 730 Mariposa, CA 95338	District Attorney of Modoc County 204 S Court Street Alturas, CA 96101-4020
District Attorney of Napa County 931 Parkway Mall Napa, CA 94559	District Attorney of Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney of Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249
District Attorney of Del Norte County 450 H Street, Ste 171 Crescent City, CA 95531	District Attorney of Glenn County P.O. Box 430 Willows, CA 95988	District Attorney of Inyo County P.O. Drawer D Independence, CA 93526
District Attorney of Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney of Madera County 209 West Yosemite Avenue Madera, CA 93837	District Attorney of Mendocino County P.O. Box 1000 Ukiah, CA 95482
District Attorney of Mono County P.O. Box 617 Bridgeport, CA 93517	District Attorney of Nevada County 201 Church St., Suite 8 Nevada City, CA 95959	District Attorney of Amador County 708 Court Street, #202 Jackson, CA 95642
District Attorney of Colusa County 547 Market Street Colusa, CA 95932	District Attorney of El Dorado County 515 Main Street Placerville, CA 95667	District Attorney of Humboldt County 825 5th Street Eureka, CA 95501
District Attorney of Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney of Lassen County 220 S. Lassen St., Ste 8 Susanville, CA 96130	District Attorney of Marin County 3501 Civic Center Dr., Room 183 San Rafael, CA 94903

District Attorney of Merced County 2222 "M" Street Merced, CA 95340	District Attorney of Monterey County PO Box 1131 Salinas, CA 93901	District Attorney of Orange County 401 Civic Clr Drive West Santa Ana, CA 92701
District Attorney of Placer County 11562 "B" Avenue Auburn, CA 95603	District Attorney of Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney of San Diego County 330 West Broadway, Suite 1320 San Diego, CA 92112
District Attorney of San Luis Obispo County 1050 Monterey St, Room 450 San Luis Obispo, CA 93408	District Attorney of Santa Clara County 70 West Hedding Street San Jose, CA 95110	District Attorney of Sierra County Courthouse, P.O. Box 457 Downieville, CA 95936
District Attorney of Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	District Attorney of Tehama County P.O. Box 519 Red Bluff, CA 96080	District Attorney of Tuolumne County 2 South Green Sonora, CA 95370
District Attorney of Yuba County 215 Fifth Street Marysville, CA 95901	District Attorney of Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney of San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023
District Attorney of San Francisco County 850 Bryant Street, Rm 325 San Francisco, CA 94103	District Attorney of San Mateo County 400 County Clr, 3 rd Fl Redwood City, CA 94063	District Attorney of Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95061
District Attorney of Siskiyou County P.O. Box 986 Yreka, CA 96097	District Attorney of Stanislaus County 800 11 th Street, Room 200 Modesto, CA 95353	District Attorney of Trinity County P.O. Box 1310 Weaverville, CA 96093
District Attorney of Ventura County 800 South Victoria Ave Ventura, CA 93009	Los Angeles City Attorney's Office Room 1800, City Hall East 200 N. Main Street Los Angeles, CA 90012	District Attorney of Riverside County 4075 Main Street, 1st Floor Riverside, CA 92501
District Attorney of San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney of San Joaquin County P.O. Box 990 Stockton, CA 95201	District Attorney of Santa Barbara County 1105 Santa Barbara Street Santa Barbara, CA 93101

District Attorney of Shasta County 1525 Court Street, Third Floor Redding, CA 96001-1632	District Attorney of Solano County 600 Union Avenue Fairfield, CA 94533	District Attorney of Sutter County 446 Second Street Yuba City, CA 95991
District Attorney of Tulare County 221 S. Mooney Ave, Room 224 Visalia, CA 93291	District Attorney of Yolo County 301 Second Street Woodland, CA 95695	San Diego City Attorney's Office 1200 3rd Avenue, 12th Floor San Diego, CA 92101
San Francisco City Attorney's Office City Hall, Room 234 San Francisco, CA 94102	San Jose City Attorney's Office 151 West Mission Street San Jose, CA 95110	Ed Well, Deputy Atty. General Office of the Attorney General Prop. 65 Enforcement Reporting Coordinator 1515 Clay Street, Ste. 2000 Oakland, CA 94612
* President or Current CEO Albertsons LLC 250 East Parkcenter Boulevard Boise, ID 83706	*Albertsons LLC c/o CT Corporation Systems 828 West 7 th Street Los Angeles, CA 90017	*Thomas Keller, President The Vons Companies, Inc. 618 Michillinda Ave. Arcadia, CA 91007-6300
*Agent for Service of Process The Vons Companies, Inc. The Prentice-Hall Corporation System, Inc. P.O. Box 526036 Sacramento, CA 95852-6036	*Steven A. Burd, CEO. Safeway, Inc. 5918 Stoneridge Mall Road Pleasanton, CA 94588-3229	*Agent for Service of Process Safeway, Inc. c/o CSC-Lawyers Incorporating Service P.O. Box 526036 Sacramento, CA 95852-6036
*David Hirz, President Ralphs Grocery Company 1100 W. Artesia Blvd. Compton, CA 90220	*Agent for Service of Process Ralphs Grocery Company c/o CSC-Lawyers Incorporating Service P.O. Box 526036 Sacramento, CA 95852-6036	*David Dillon, CEO The Kroger Company 1014 Vine St. Cincinnati, OH 45202
*Agent for Service of Process The Kroger Company c/o CSC-Lawyers Incorporating Service P.O. Box 526036 Sacramento, CA 95852-6036	*Current CEO or President Fred Meyer Stores, Inc. 3800 SE 22nd Avenue Portland, OR 97202	*Current CEO or President Food 4 Less of California, Inc. 1100 W. Artesia Blvd. Compton, CA 90220
*Agent for Service of Process Food 4 Less of California, Inc. c/o CSC-Lawyers Incorporating Service P.O. Box 526036 Sacramento, CA 95852-6036	*Current CEO or President Food 4 Less of Southern California, Inc. 1100 W. Artesia Blvd. Compton, CA 90220	*Agent for Service of Process Food 4 Less of Southern California, Inc. c/o CSC-Lawyers Incorporating Service P.O. Box 526036 Sacramento, CA 95852-6036
*Current CEO or President Foods Co. 1100 W. Artesia Blvd. Compton, CA 90220	*Jack H. Brown, CEO Stater Bros. Market 21700 Barton Road Colton, CA 92324	*Agent for Service of Process Stater Bros. Market c/o Bruce D. Warner 3750 University Avenue, Ste. 610 Riverside, CA 92501

<p>*Etienne Snollaerts, CEO Smart & Final, Inc. 600 Citadel Drive City of Commerce, CA 90040</p>	<p>*Agent for Service of Process Smart & Final, Inc. c/o C. T. Corporation System 828 West 7th Street Los Angeles, CA 90017</p>	<p>*Dan Bane, CEO Trader Joe's Company 800 S. Shamrock Avenue Monrovia, CA 91016</p>
<p>*Agent for Service of Process Trader Joe's Company c/o Mary Genest 800 S. Shamrock Avenue Monrovia, CA 91016</p>	<p>*Bob Mackey, CEO Whole Foods Market, Inc. 550 Bowie Street Austin, TX 78703</p>	<p>*Agent for Service of Process Whole Foods Market, Inc. c/o CT Corporation System 1021 Main Street, Suite 1150 Houston, TX 77002</p>
<p>*Joyce Raley Teel Raley's, Inc. 500 West Capitol Avenue West Sacramento, CA 95605</p>	<p>*Agent for Service of Process Raley's, Inc. c/o Jennifer H. Crabb 500 West Capitol Avenue West Sacramento, CA 95605</p>	<p>*Current CEO or President New Albertsons, Inc. 401 2nd Avenue South Minneapolis, MN 55401</p>
<p>*Agent for Service of Process New Albertsons, Inc. c/o CT Corporation System 818 West 7th Street Los Angeles, CA 90017</p>	<p>*James Sinegal, CEO Costco Wholesale Corporation 999 Lake Dr. Issaquah, WA 98027</p>	<p>*Agent for Service of Process Costco Wholesale Corporation c/o CT Corporation System 818 West 7th Street Los Angeles, CA 90017</p>

NOTICE OF VIOLATION
CONSUMER EXPOSURE TO ACRYLAMIDE IN POTATO CHIPS

60-Day Notice of Intent to Sue Under Proposition 65
for Failure to Warn Public About Chemicals Listed Under Health and Safety Code Section 25249
(California Safe Drinking Water and Toxic Enforcement Act)
May 14, 2008

This Notice of Violation is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d). Proposition 65 requires that notice of intent to sue be given to a violator 60 days before the suit is filed.

This Notice is provided by the Environmental Law Foundation ("ELF"), a California non-profit organization dedicated to the preservation and enhancement of human health and the environment. ELF has a long-standing interest in reducing health hazards to the public posed by toxic chemicals and protecting the public from harmful substances. Any inquiries regarding this Notice of Violation may be directed to James Wheaton, President of ELF, 1736 Franklin Street, 9th Floor, Oakland, CA 94612, (510) 208-4555. Inquiries may also be directed to David A. Rosen, Rose, Klein & Marias LLP, 801 South Grand Avenue, Eleventh Floor, Los Angeles, CA 90017-4645, (213) 626-0571.

This Notice constitutes notice that the entities identified in Exhibit I have violated and continue to violate the warning provisions of California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code §§ 25249.5, *et. seq.* (commonly referred to as "Proposition 65"). This Notice covers the "warning provision" of Proposition 65, which is found at California Health and Safety Code Section 25249.6. This Notice has been served on the entities identified in Exhibit I and the appropriate governmental authorities.

The businesses identified in Exhibit I have exposed and continue to expose consumers to Acrylamide, a chemical known to the State of California to cause cancer, without providing a clear and reasonable warning. The category of products that is the subject of this Notice is potato chips that contain Acrylamide which are manufactured, distributed or sold by the entities identified in Exhibit I ("Products Sold by Retailer Under the Following Brand Names").

Consumers are exposed to Acrylamide by eating potato chips that contain Acrylamide. The route of exposure for these violations is direct ingestion when consumers eat the Products. These exposures occur in homes, schools, workplaces and everywhere else throughout California where these Products are sold and/or consumed. No clear and reasonable warning is provided with these Products regarding the carcinogenic hazards of Acrylamide. These violations have been occurring since at least January 1, 1991 and are continuing to this day.

Pursuant to Health and Safety Code § 25249.7(d)(1), ELF included the attached Certificate of Merit, to wit, that ELF has consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding exposure to Acrylamide and that, based on that information, ELF believes that there is a reasonable and meritorious case. Factual information sufficient to establish the basis of the Certificate of Merit is

included with the Notice that is served on the Attorney General and is provided to that office in confidence and is not to be disclosed, except according to law.

For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, please see the attached Appendix A, entitled "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary", which was prepared by the Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency. (A copy is not provided to the public enforcement agencies which receive this notice.)

EXHIBIT 1 – List of Violators with Non-Exclusive Examples of the Products Sold
 NOTICE OF VIOLATION
 California Safe Drinking Water and Toxic Enforcement Act
 ACRYLAMIDE IN POTATO CHIPS, CRISPS AND STRINGS

Retailer/Responsible Corporate Entity	Products Sold by Retailer Under the Following Brand Names
SUPERVALU INC.	Albertson's (house brand) Pik-Nik Boulder Canyon Tim's Cascade Pringles Lay's Kettle Chips Cape Cod
SAVE MART SUPERMARKETS	Albertson's (house brand) Pik-Nik Boulder Canyon Tim's Cascade Pringles Lay's Kettle Chips Cape Cod
WHOLE FOODS MARKET CALIFORNIA, INC. MRS. GOOCH'S NATURAL FOOD MARKETS, INC. WHOLE FOODS MARKET, INC.	365 (house brand) Michael Season's Boulder Canyon Terra Kettle

CERTIFICATE OF MERIT

California Health and Safety Code Section 25249.7(d)

I, David A. Rosen, hereby declare:

This Certificate of Merit accompanies the attached sixty-day Notice of Violation in which it is alleged that the parties identified in the Notice have violated Health and Safety Code §25249.6 by exposing individuals to a chemical known to the State of California to cause cancer without providing a clear and reasonable warning. This Certificate of Merit is submitted pursuant to and in compliance with California Health and Safety Code §25249.7(d).

I am the Attorney representing the Environmental Law Foundation ("ELF"), which is the party providing the Notice of Violation. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies or other data regarding the exposures to the listed chemical that is the subject of this Notice of Violation. Based on the information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violators will be able to establish any of the affirmative defenses set forth in the statute.

The copy of the Certificate of Merit that is served on the Attorney General includes factual information sufficient to establish the basis for this Certificate, including the information identified in Health & Safety Code §25249.7(h)(2), *i.e.*: (1) the identity of the persons consulted with and relied on by the certifier; and (2) the facts, studies, or other data reviewed by those persons. This information is provided to that office in confidence and is not to be disclosed, except according to law.

Dated: May 14, 2008



David A. Rosen
Attorney for Environmental Law Foundation

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

CERTIFICATE OF SERVICE BY MAIL

I, Shirley M. Walker, declare that:

I am employed in Los Angeles County, California. I am over the age of 18 years and not a party to the within cause; my business address is 801 South Grand Avenue, Eleventh Floor, Los Angeles, CA 90017-4645.

I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, to wit, that correspondence is deposited with the United States Postal Service the same day in the ordinary course of business.

On May 15, 2008, I served true copies of the following documents on the parties and governmental authorities listed in the attached service list by placing true and correct copies of the same in sealed envelopes with first class postage fully prepaid thereon and deposited in the United States Mail at Los Angeles, California:

NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT;

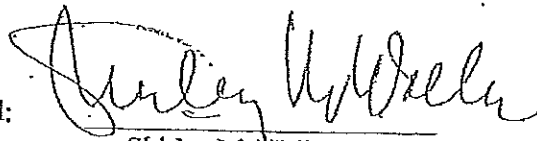
EXHIBIT I - LIST OF VIOLATORS WITH NON-EXCLUSIVE EXAMPLES OF THE PRODUCTS SOLD; and

CERTIFICATE OF MERIT;

APPENDIX A - THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65); A SUMMARY (only sent to those on service list marked with an asterisks).

I certify under penalty of perjury that the foregoing is true and correct, and that this certification was executed on May 15, 2008 at Los Angeles, California.

Signed:


Shirley M. Walker

SERVICE LIST

District Attorney of Alameda County 1225 Fallon Street, Room 900 Oakland, CA 94612	District Attorney of Butte County 25 County Center Drive Oroville, CA 95965	District Attorney of Contra Costa County 725 Court Street, Room 402 Martinez, CA 94553
District Attorney of Fresno County 2220 Tulare Street, #1000 Fresno, CA 93721	District Attorney of Imperial County 939 Main Street El Centro, CA 92243	District Attorney of Kings County 1400 West Lacey Hanford, CA 93230
District Attorney of Los Angeles County 210 W. Temple Street, Room 345 Los Angeles, CA 90012	District Attorney of Mariposa County P.O. Box 730 Mariposa, CA 95338	District Attorney of Modoc County 204 S Court Street Alturas, CA 96101-4020
District Attorney of Napa County 931 Parkway Mall Napa, CA 94559	District Attorney of Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney of Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249
District Attorney of Del Norte County 450 H Street, Ste 171 Crescent City, CA 95531	District Attorney of Glenn County P.O. Box 430 Willows, CA 95988	District Attorney of Inyo County P.O. Drawer D Independence, CA 93526
District Attorney of Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney of Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney of Mendocino County P.O. Box 1000 Ukiah, CA 95482
District Attorney of Mono County P.O. Box 617 Bridgeport, CA 93517	District Attorney of Nevada County 201 Church St., Suite 8 Nevada City, CA 95959	District Attorney of Amador County 708 Court Street, #202 Jackson, CA 95642
District Attorney of Colusa County 547 Market Street Colusa, CA 95932	District Attorney of El Dorado County 515 Main Street Placerville, CA 95667	District Attorney of Humboldt County 825 5th Street Eureka, CA 95501
District Attorney of Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney of Lassen County 220 S. Lassen St., Ste 8 Susanville, CA 96130	District Attorney of Marin County 3501 Civic Center Dr., Room 183 San Rafael, CA 94903

District Attorney of Merced County 2222 "M" Street Merced, CA 95340	District Attorney of Monterey County PO Box 1131 Salinas, CA 93901	District Attorney of Orange County 401 Civic Ctr Drive West Santa Ana, CA 92701
District Attorney of Placer County 11562 "B" Avenue Auburn, CA 95603	District Attorney of Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney of San Diego County 330 West Broadway, Suite 1320 San Diego, CA 92112
District Attorney of San Luis Obispo County 1050 Monterey St, Room 450 San Luis Obispo, CA 93408	District Attorney of Santa Clara County 70 West Hedding Street San Jose, CA 95110	District Attorney of Sierra County Courthouse, P.O. Box 457 Downieville, CA 95936
District Attorney of Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	District Attorney of Tehama County P.O. Box 519 Red Bluff, CA 96080	District Attorney of Tuolumne County 2 South Green Sonora, CA 95370
District Attorney of Yuba County 215 Fifth Street Marysville, CA 95901	District Attorney of Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney of San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023
District Attorney of San Francisco County 850 Bryant Street, Rm 325 San Francisco, CA 94103	District Attorney of San Mateo County 400 County Ctr, 3 rd Fl Redwood City, CA 94063	District Attorney of Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95061
District Attorney of Siskiyou County P.O. Box 986 Yreka, CA 96097	District Attorney of Stanislaus County 800 11 th Street, Room 200 Modesto, CA 95353	District Attorney of Trinity County P.O. Box 1310 Weaverville, CA 96093
District Attorney of Ventura County 800 South Victoria Ave Ventura, CA 93009	Los Angeles City Attorney's Office Room 1800, City Hall East 200 N. Main Street Los Angeles, CA 90012	District Attorney of Riverside County 4075 Main Street, 1st Floor Riverside, CA 92501
District Attorney of San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney of San Joaquin County P.O. Box 990 Stockton, CA 95201	District Attorney of Santa Barbara County 1105 Santa Barbara Street Santa Barbara, CA 93101

District Attorney of Shasta County 1525 Court Street, Third Floor Redding, CA 96001-1632	District Attorney of Solano County 600 Union Avenue Fairfield, CA 94533	District Attorney of Sutter County 446 Second Street Yuba City, CA 95991
District Attorney of Tulare County 221 S. Mooney Ave, Room 224 Visalia, CA 93291	District Attorney of Yolo County 301 Second Street Woodland, CA 95695	San Diego City Attorney's Office 1200 3rd Avenue, 12th Floor San Diego, CA 92101
San Francisco City Attorney's Office 1 Dr. Carleton B. Goodlett Place Room 234 San Francisco, CA 94102	San Jose City Attorney's Office 151 West Mission Street San Jose, CA 95110	Ed Weil, Deputy Atty. General Office of the Attorney General Prop. 65 Enforcement Reporting Coordinator 1515 Clay Street, Ste. 2000 Oakland, CA 94612
*Mr. Jeffrey Noddle, President SUPERVALU INC. 11840 Valley View Road Eden Prairie, MN 55344	*SUPERVALU INC. c/o CT Corporation System 828 West Seventh Street Los Angeles, CA 90017	*Robert M. Piccinini, President SAVE MART SUPERMARKETS 1800 Standiford Avenue Modesto, CA 95350
*Mr. Michael J. Silveira Registered Agent SAVE MART SUPERMARKETS 1800 Standiford Avenue Modesto, CA 95350	*Mr. Anthony Gilmore, President WHOLE FOODS MARKET CALIFORNIA, INC. 5980 Horton Street, Suite 200 Emeryville, CA 94608	*WHOLE FOODS MARKET CALIFORNIA, INC. c/o CT Corporation System 818 West Seventh Street Los Angeles, CA 90017
*Mr. Michael Besancon, President MRS. GOOCH'S NATURAL FOOD MARKETS, INC. 5315 Magnolia Boulevard Suite 320 Austin, TX 78703	*MRS. GOOCH'S NATURAL FOOD MARKETS, INC. c/o CT Corporation System 818 West Seventh Street Los Angeles, CA 90017	

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EXHIBIT B

OPT-IN DECLARATION AND AGREEMENT

The undersigned entity or person hereby declares and agrees as follows:

1. I reasonably believe that the undersigned entity or person at some time within the last year sold (Retailer only) in the State of California, or sold, manufactured, distributed, supplied, or imported to be sold in the State of California (Supplier), Chip Products or Crisp Products as defined in Section 1.7 of the Consent Judgment in the captioned action ("Covered Products"), containing levels of acrylamide in excess of those set forth in the Consent Judgment without a clear and reasonable warning as required by Health and Safety Code section 25249.6. The Covered Products are identified by name on an attachment hereto, with each Covered Product specifically identified on the attachment as either a Chip Product or a Crisp Product, as defined in Section 1.7 of the Consent Judgment.
2. I stipulate on behalf of the undersigned entity or person to accept service of a Notice of Violation under Health and Safety Code section 25249.7, and a summons and the ELF Complaint as a Doe defendant to be designated by ELF and voluntarily appear in *Environmental Law Foundation v. Albertsons, LLC, et al.*, in the Los Angeles County Superior Court, Case No. BC 384665, through the filing of this document;
3. On behalf of the undersigned entity or person, I have read and agree to be bound by all terms and conditions of the Consent Judgment entered in Los Angeles Superior Court, Case No. BC 384665. By signing below, I further agree on behalf of the undersigned entity or person to be subject to all of the requirements and benefits of the Consent Judgment as set forth therein.
4. By signing below, I further agree on behalf of the undersigned entity or person that I will cause the original signed Opt-In Declaration and Agreement to be mailed with a settlement check as set forth in Section 11.8 of the Consent Judgment, postage pre-paid, within 30 days

1 of execution, to David Rosen at Rose, Klein Marias, as described in the Settlement
2 Agreement, who may file the Opt-In Declaration and Agreement with the Court, pay any
3 required fees, serve a copy of the Opt-In Declaration and Agreement upon the California
4 Attorney General and upon any relevant parties, and submit the Opt-In Declaration and
5 Agreement to be joined to the Consent Judgment to the Court.
6

- 7 5. Within the last year the undersigned entity employed ten or more persons.
8 6. I have full authority to agree to the Consent Judgment and settle this potential civil action on
9 behalf of the undersigned entity.

10 As to the facts listed above, I declare under penalty of perjury under the laws of the State of
11 California that they are true and correct. As to the terms to which the undersigned entity has agreed, I
12 hereby memorialize agreement to those terms by signing below.
13

14 Executed on _____ at _____, State of _____

15 AGREED

Approved as to Form.

16 For the Entity:

For the Entity's Attorney:

17 Signature

Signature

18 _____
19 Name:

_____ Name:

20 _____
21 Title:

_____ Name of firm of attorney:

22 _____
23 Address, Telephone Number, Facsimile:

_____ Address, Telephone Number, Facsimile:
24 _____
25 _____
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28 _____

1 EXHIBIT C

2 Testing and Compliance Procedures

3 1. This set of procedures is intended to govern testing and compliance for any Opt-In
4 Supplier ("Supplier Defendant") who opts into the Consent Judgment with the Settling Retailer
5 Defendants ("Consent Judgment") pursuant to its Section 11 and Exhibit B. Unless otherwise stated
6 herein, all the terms of the Consent Judgment shall apply to such Opt-In Supplier.
7

8 2.1 Standards and Target Levels

9 (a) Supplier Defendants shall reduce the level of acrylamide in all Covered
10 Products after December 31, 2011 (the "Target Date") to a weighted arithmetic mean of 281.6 parts
11 per billion ("ppb") for sliced chip Products ("Chip Target Level") and 490 ppb for Crisp Products
12 ("Crisp Target Level") (collectively, Chip Target Level and Crisp Target Level referred to hereafter
13 as the "Target Levels"),³ unless warnings are given pursuant to the Consent Judgment. For purposes
14 of this Consent Judgment, "Chip Products" are potato chips made from sliced potatoes, whereas
15 "Crisp Products" are all other potato-based chip products that are not made from sliced potatoes (see
16 Section 1.7 of the Consent Judgment). For the purposes of this Consent Judgment, the Supplier
17 Defendant shall not be considered to have achieved the applicable Target Level if, as of the Target
18 Date, the arithmetic mean of the acrylamide concentration in any product line of Covered Products
19 (e.g., low fat chips constitute a distinct "product line" from other potato chips), as determined in
20 accordance with the calculation method described *infra* at section 2.3, exceeds the applicable Target
21 Level by more than 25%. Any product line for which pre-Target Date warnings have been provided
22 by product label in accordance with Section 11.6 of the Consent Judgment shall not be included in
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27 ³ Except where a higher level is set through application of section 5.2(a) of the Consent Judgment.
28

1 any calculation determining whether the applicable Target Level or the threshold set forth in Section
2 2.1(a) has been achieved.

3 (b) Each Supplier Defendant shall endeavor, in good faith using all its
4 commercially and technologically reasonable efforts, to achieve by the Target Date the applicable
5 Target Level in Covered Products shipped for sale in California. However, at any time after the
6 Effective Date, any Supplier Defendant may, at its sole discretion, abandon its good faith efforts to
7 achieve the applicable Target Level set forth in this section 2.1 for any or all Covered Products.
8 Within 30 days of reaching a decision to abandon such good faith efforts, such Supplier Defendant
9 shall notify Plaintiff in writing and may, at its sole discretion, comply with this provision by either (a)
10 providing product label warnings consistent with the requirements of Section 11.6 of the Consent
11 Judgment for all such affected Covered Products or, (b) taking all commercially reasonable steps to
12 ensure that such affected Covered Products are, from the date of the decision, not shipped for sale in
13 California. If a Supplier Defendant decides to continue to ship some, but not all, Covered Products
14 for sale in California with product label warnings pursuant to this section, such products ("Non-
15 Averaged Products") shall not be included in its calculation of weighted average for acrylamide
16 levels set forth in section 2.3(c) below.

17
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19 2.2. "Shipped for sale in California" means direct shipment by a Supplier Defendant into
20 California for sale in California, or sale by a Supplier Defendant to a third party that a Supplier
21 Defendant knows will sell the Covered Product in California. Where a retailer or distributor sells
22 products both in California and other states, Supplier Defendant shall take all commercially
23 reasonable steps to ensure that after the Target Levels have been reached, only Covered Products that
24 meet those levels are sold in California.
25

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1 2.3. Standard and Verification.

2 (a) Test Method. For purposes of this Consent Judgment, testing for acrylamide
3 by 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 by
5 the Supplier Defendant and Plaintiff.
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7 (b) Sampling Protocol. Test results demonstrating compliance with the applicable
8 Target Level shall be conducted in accordance with a sampling protocol that establishes that the
9 sales-weighted arithmetic mean of acrylamide levels in all Covered Products is at or below the
10 applicable Target Level, with a 95% confidence level, i.e. $p < .05$. The sampling protocol shall require
11 a minimum of the following: the testing party shall take a minimum of 30 samples, taken over a
12 period of multiple months, from each product line among the Covered Products prior to the Target
13 Date. The samples for the year prior to the Target Date shall then be aggregated according to the
14 formula in paragraph 2.3(c) to determine compliance with the Target Level. All test results, not
15 including sales data used to calculate weighted averages, shall be public and not subject to any claims
16 of trade secret or any other basis for withholding the data from any person.
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18 (c) Calculation of Average. For purposes of this Consent Judgment, the sales-
19 weighted arithmetic mean is to be calculated by the following formula: Multiply the arithmetic mean
20 of the acrylamide concentration of each product line of Covered Products other than Non-Averaged
21 Products (established by the methodology set forth in paragraph 2.3(a) and (b)) by that product line's
22 fraction of total sales volume for all product lines to be included in the weighted arithmetic mean, and
23 thereafter sum all such weighted means across all product lines that are required to be included in the
24 weighted arithmetic mean. Sales volume for each product and for total sales volume shall be based
25 upon the most current 52 week Nielsen data for the metropolitan areas of Los Angeles, San
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1 Francisco, San Diego and Sacramento available to Supplier Defendant one month prior to the Target
2 Date.

3 (d) Post-Compliance Testing. If a Supplier Defendant's test results demonstrate
4 that the applicable Target Level has been achieved for any Covered Product, that Supplier Defendant
5 shall be required to test that Covered Product annually: between three and four years of the date on
6 which the applicable Target Level is achieved, and between four and five years of the date on which
7 the applicable Target Level is achieved. If those tests confirm that the applicable Target Level has
8 been achieved for the Covered Product, the Supplier Defendant shall have no further duty to test that
9 Covered Product, although Plaintiff may, after meeting and conferring with the Supplier Defendant,
10 apply to the Court for enforcement of the judgment based on results of its own testing showing that
11 the applicable Target Level has not been achieved. Any test data used by Plaintiff for this purpose
12 must be performed and analyzed by methods set forth in sections 2.3(a) and 2.3(b) above. Upon
13 request, each Supplier Defendant shall provide to Plaintiff, on a confidential basis, sales data used by
14 that Supplier Defendant to calculate the sales-weighted arithmetic mean pursuant to section 2.3(c).
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16 (e) Newly Compliant Products. If a Supplier Defendant has not achieved the
17 applicable Target Level for any Covered Product by the Target Date, it shall provide warnings for
18 such Covered Product as provided in the Consent Judgment. A Supplier Defendant that has not
19 achieved the applicable Target Level for any Covered Product may also continue periodic testing of
20 such Covered Product until tests demonstrate that the applicable Target Level has been achieved for
21 such Covered Product, at which time the Supplier Defendant shall have no further duty to warn,
22 although Plaintiff may apply to the Court for enforcement of the judgment based on results of his
23 own testing showing that the applicable Target Level has not been achieved. Any test data used by
24 Plaintiff for this purpose must be performed and analyzed by methods set forth in sections 2.3(a) and
25 2.3(b) above. Upon request, each Supplier Defendant shall provide to Plaintiff, on a confidential
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1 basis, sales data used by that Supplier Defendant to calculate the weighted arithmetic mean pursuant
2 to section 2.3(c).

3 (f) Technology Licensing. The requirements in this Consent Judgment are not
4 contingent upon the use of any particular method to meet the Target Level, but Supplier Defendant
5 shall license any patented technology used to meet the Target Level, whether existing or in the future,
6 to others for use in other food products, at a commercially reasonable price and using other
7 commercially reasonable terms.
8

1 EXHIBIT D

2 Testing and Compliance Procedures

3 2.1 Standards and Target Levels

4 (a) Suppliers shall reduce the level of acrylamide in all Covered Products after
5 December 31, 2011 (the "Target Date") to a weighted arithmetic mean of 281.6 parts per billion
6 ("ppb") for sliced Chip Products ("Chip Target Level") and 490 ppb for Crisp Products ("Crisp
7 Target Level") (collectively, the Chip Target Level and the Crisp Target Level are referred to
8 hereafter as the "Target Levels"),⁴ unless one of the following product label warnings is given:

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

16 For purposes of compliance with the Target Levels set forth herein, "Chip Products" are
17 potato chips made from sliced potatoes, whereas "Crisp Products" are all other potato based chip
18 products that are not made from sliced potatoes (see Section 1.7 of the Consent Judgment). Suppliers
19 shall not be considered to have achieved the applicable Target Level if, as of the Target Date, the
20 arithmetic mean of the acrylamide concentration in any product line of Covered Products (*e.g.*, low
21 fat chips constitute a distinct "product line" from other potato chips), as determined in accordance
22 with the calculation method described *infra* at section 2.2, exceeds the applicable Target Level by
23 more than 25%. Any product line for which one of the Proposition 65 product label warnings
24 described above is being given shall not be included in any calculation determining whether the
25 applicable Target Level or the threshold set forth in Section 2.1(a) has been achieved.

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⁴ Except where a higher level is set through application of section 5.2(a) of the Consent Judgment.

1 2.2. Standard and Verification.

2 (a) Test Method. For purposes of this Consent Judgment, testing for acrylamide
3 by either party shall be performed using either GC/MS (Gas Chromatograph/Mass Spectrometry),
4 LC-MS/MS (Liquid Chromatograph-Mass Spectrometry).

5 (b) Sampling Protocol. Test results demonstrating compliance with the applicable
6 Target Level shall be conducted in accordance with a sampling protocol that establishes that the
7 sales-weighted arithmetic mean of acrylamide levels in all Covered Products is at or below the
8 applicable Target Level, with a 95% confidence level, i.e. $p < .05$. The sampling protocol shall require
9 a minimum of the following: the testing party shall take a minimum of 30 samples, taken over a
10 period of multiple months, from each product line among the Covered Products prior to the Target
11 Date. The samples for the year prior to the Target Date shall then be aggregated according to the
12 formula in paragraph 2.2(c) to determine compliance with the Target Level. All test results, not
13 including sales data used to calculate weighted averages, shall be public and not subject to any claims
14 of trade secret or any other basis for withholding the data from any person.

15 (c) Calculation of Average. For purposes of this Consent Judgment, the sales-
16 weighted arithmetic mean is to be calculated by the following formula: Multiply the arithmetic mean
17 of the acrylamide concentration of each product line of Covered Products that does not have affixed
18 to it one of the Proposition 65 product label warnings set forth in section 2.1(a) of this Exhibit D,
19 (established by the methodology set forth in paragraph 2.2(a) and (b)) by that product line's fraction
20 of total sales volume for all product lines to be included in the weighted arithmetic mean, and
21 thereafter sum all such weighted means across all product lines that are required to be included in the
22 weighted arithmetic mean. Sales volume for each product and for total sales volume shall be based
23 upon the most current 52 week Nielsen data for the metropolitan areas of Los Angeles, San
24 Francisco, San Diego and Sacramento available to the Supplier one month prior to the Target Date.

25 2.3 Compliance with a Prior Consent Judgment.

26 (a) Notwithstanding the provisions of Paragraphs 2.1 and 2.2 of this Exhibit D as
27 set forth above, or any contrary provision set forth elsewhere in this Consent Judgment, if a Supplier
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1 is in compliance with an applicable Manufacturer Settlement pursuant to the testing methodology set
2 forth therein, it need only provide written assurance of such to a Settling Retailer Defendant.
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