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**ENDORSED
FILED
ALAMEDA COUNTY**

AUG 31 2011

K. McCoy, Exec. Off./Clerk

10 *Attorneys for People of the State of California*
11 *ex rel. Kamala D. Harris, Attorney General of the*
12 *State of California*

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF ALAMEDA

15 PEOPLE OF THE STATE OF CALIFORNIA
16 *ex rel. KAMALA D. HARRIS, ATTORNEY*
17 *GENERAL OF THE STATE OF*
CALIFORNIA,

18 Plaintiff,

19 v.

20 SNYDER'S OF HANOVER, INC., BIRDS
21 EYE FOODS, INC., CORAZONAS FOOD,
22 INC., FRITO-LAY, INC., GRUMA
CORPORATION, H.J. HEINZ COMPANY,
23 L.P., KETTLE FOODS, INC., LANCE, INC.,
RESERVE BRANDS, INC., SNAK KING
CORPORATION, and DOES 1 through 100,

24 Defendants.

CASE NO.: RG 09455286

ASSIGNED FOR ALL PURPOSES TO:

JUDGE: Hon. Steven A. Brick
DEPT: 17

~~PROPOSED~~ CONSENT JUDGMENT
AS TO DEFENDANT SNAK KING
CORPORATION

Date: August 31, 2011
Time: 3:00 p.m.
Dept: 17
Judge: Honorable Steven A. Brick

Reservation No.: R-1205019

Trial Date: None set.
Action Filed: June 1, 2009

1 **1. INTRODUCTION**

2 1.1. On June 1, 2009, the People of the State of California *ex rel.* the Attorney
3 General of the State of California (the "People" or the "Attorney General") filed a
4 ~~complaint for civil penalties and injunctive relief for violations of Proposition 65 and~~
5 unlawful business practices in the Superior Court for the County of Alameda. The People's
6 Complaint alleges that the Defendants failed to provide clear and reasonable warnings that
7 ingestion of the products identified in the Complaint would result in exposure to
8 acrylamide, a chemical known to the State of California to cause cancer, in violation of the
9 Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section
10 25249.6 et seq., also known as "Proposition 65." The Complaint also alleges that these acts
11 constitute unlawful acts in violation of the Unfair Competition Law, pursuant to Business
12 and Professions Code sections 17200 et seq.

13 1.2. Snak King Corporation ("Settling Defendant") is among the Defendants
14 named in the Complaint. Settling Defendant has generally denied all material allegations of
15 the Complaint, and has asserted numerous affirmative defenses. Without limiting any other
16 denials, Settling Defendant specifically denies that any of its products requires a Proposition
17 65 warning or otherwise causes harm to any person. Both the People and Settling
18 Defendant shall be referred to as a "Party" to this Consent Judgment, and collectively they
19 shall be referred to herein as the "Parties" to this Consent Judgment.

20 1.3. Settling Defendant is a Delaware corporation that employs more than ten
21 employees, and has employed more than ten employees at times relevant to the allegations
22 of the Complaint, and that manufactures, distributes and/or sells products in the State of
23 California and has done so in the past.

24 1.4. Covered Products.

25 (a) The products covered by this Consent Judgment are those snack food products
26 manufactured and/or sold by Settling Defendant or its Affiliates (as defined in Paragraph 8)
27 that are identified in the attached Exhibit A (hereinafter, "Covered Products").
28

1 (b) Settling Defendant will submit to the Office of the Attorney General, prior to
2 the Effective Date, information about all of the Covered Products identified as private label
3 products on Exhibit A, including, but not limited to, brand names and customers, which
4 ~~Settling Defendant deems to be confidential, proprietary, or trade secret information.~~ This
5 information, as updated from time to time, is referred to herein as "Confidential Private
6 Label Information." Settling Defendant shall provide to the Attorney General updates to the
7 Confidential Private Label Information at least annually by January 31 of each year until
8 such time that Settling Defendant no longer has a duty under this Consent Judgment to test
9 the Covered Products. Products that Settling Defendant identifies in the most recent
10 Confidential Private Label Information submitted to the Attorney General each year as
11 corresponding to the private label products listed on Exhibit A shall be Covered Products
12 for the purposes of this Consent Judgment.

13 (c) All Confidential Private Label Information provided to the Attorney General,
14 whether before or after the Effective Date, is deemed to be Protected Information under the
15 Protective Order entered in this case on March 12, 2010 ("Protective Order"). For the
16 purposes of this Consent Judgment, all elements of the Protective Order shall apply to
17 Confidential Private Label Information, except that (a) Paragraphs 6, 7, 9, 16, and 17 of the
18 Protective Order do not apply to Confidential Private Label Information; and (b)
19 Confidential Private Label Information need not be consecutively Bates-numbered. Further,
20 to the extent the Court modifies the Protective Order upon motion by any party to this
21 action in accordance with Paragraph 18 of the Protective Order, such modification shall not
22 apply to the application of the Protective Order to this Consent Judgment without the
23 written consent of Settling Defendant.

24 (d) The Attorney General acknowledges that the Confidential Private Label
25 Information is deemed by Snak King to be, among other things, proprietary and trade secret
26 information that should be exempt from disclosure under the California Public Records Act
27 (Gov't Code, §§ 6250 et seq.) or other applicable public record or freedom of information
28 law and that should be protected by the privilege set forth in Evidence Code § 1060 to the

1 fullest extent possible. Notwithstanding anything herein or in the Protective Order to the
2 contrary, (1) the People shall disclose Confidential Private Label Information if requested to
3 do so by Settling Defendant, and (2) the People shall return to Settling Defendant or destroy
4 ~~all Confidential Private Label Information submitted within four years after the Target~~
5 Level has been achieved, or five years from the Effective Date, whichever is later.

6 (e) After the Effective Date, should Settling Defendant introduce for sale to
7 consumers in California a processed snack food product not described in Exhibit A and
8 desire to incorporate such product(s) into this consent judgment, then Settling Defendant
9 shall give notice of such new product(s) ("New Product") to the Attorney General in the
10 form of a revised version of Exhibit A, in addition to providing any information necessary
11 to identify private label products. Should the Attorney General object to such notice within
12 45 days following receipt of such notice, then the Parties shall proceed in accordance with
13 Paragraph 5.1; otherwise, this Consent Judgment shall be deemed to be modified to include
14 such product as a Covered Product. Among other factors that may be considered by the
15 Attorney General when determining if an objection is warranted are acrylamide
16 concentrations in the proposed New Product(s), the product Group appropriate for the New
17 Product(s), and the effect incorporation of the New Product(s) will have on averaging or
18 sales-weighting allocations used to determine achievement of the Target Level.

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

26 1.6. The People and Settling Defendant stipulate to the entry of this Consent
27 Judgment as a full and final settlement of all claims that were raised, or could have been
28 raised, in the Complaint (except as specified in Paragraph 8 herein) arising out of the facts

1 or conduct alleged therein. Except as expressly set forth herein, nothing in this Consent
2 Judgment shall prejudice, waive or impair any right, remedy, or defense the Attorney
3 General or Settling Defendant may have in any other or in future legal proceedings
4 ~~unrelated to these proceedings. However, this paragraph shall not diminish or otherwise~~
5 affect the obligations, responsibilities, and duties of the Parties under this Consent
6 Judgment.

7 1.7. By stipulating to the entry of this Consent Judgment and agreeing to provide
8 the relief and remedies specified herein, Settling Defendant does not admit (a) that it has
9 violated, or threatened to violate, Proposition 65 or Business and Professions Code sections
10 17200 et seq., or any other law or legal duty; or (b) that the chemical acrylamide in food
11 poses any risk to human health. The Parties recognize that acrylamide is naturally formed
12 when certain foods, such as the snack food products at issue in this case, are heated, and that
13 levels of acrylamide formation are due to a variety of factors, including (among others)
14 heating time and temperature.

15 1.8. The Effective Date of this Consent Judgment shall be the date on which this
16 Consent Judgment is entered as a judgment by this Court, except that the confidentiality
17 provisions of Paragraphs 1.4(c) and (d) and 2.3(e) will go into effect on execution by the
18 Parties of the Stipulation for Entry of this [Proposed] Consent Judgment.

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

20 2.1. *Target Level and Compliance Date.*

21 Settling Defendant shall reduce the level of acrylamide in its Covered Products
22 shipped for sale in California after August 31, 2011 (the "Compliance Date") to 281 parts
23 per billion, calculated pursuant to the protocol described in Paragraph 2.3 (the "Target
24 Level"), or be subject to the provisions of Paragraph 3. In the interim, Settling Defendant
25 shall continue its program of research, development, and implementation of technologies
26 and methods intended to reduce the presence of acrylamide in the Covered Products shipped
27 for sale in California. Settling Defendant shall endeavor in good faith, using commercially
28 and technologically reasonable efforts, to achieve the Target Level in the Covered Products

1 shipped for sale in California by the Compliance Date.

2 2.2. "Shipped for sale in California" means Covered Products that Settling
3 Defendant either directly ships into California for sale in California or that it sells to a
4 ~~distributor who Settling Defendant knows will sell the Covered Products to consumers in~~
5 California. Where a retailer or distributor sells products both in California and other states,
6 Settling Defendant shall take commercially reasonable steps to ensure that, after the Target
7 Level has been reached, the only Covered Products that are sold in California are either (i)
8 Covered Products for which Settling Defendant has complied with Paragraph 2; or (ii)
9 Covered Products for which Settling Defendant has complied with Paragraph 3.

10 2.3. *Standard and Verification.*

11 (a) Testing for acrylamide shall be performed using either GC/MS (Gas
12 Chromatrography/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass
13 Spectrometry/Mass Spectrometry), or any other testing method agreed upon by the Parties
14 to this Consent Judgment.

15 (b) For each Type identified within each Group in Exhibit A, Settling Defendant
16 shall collect at least five (5) random samples. The samples within a Type shall be collected
17 over no less than a ten-day period. Each sample shall be from a unique stock keeping unit
18 ("SKU"). If a Type has fewer than five (5) SKUs, each SKU within that Type shall be
19 sampled at least once. In any event, if Settling Defendant produces fewer than five (5)
20 SKUs in a particular Type during the period of time Settling Defendant has chosen to
21 conduct such sampling (which period must be at least 60 days long), then each SKU in that
22 Type produced during such period shall be sampled at least once. Further, for each Type,
23 the sampling requirements set forth above shall apply to each location that supplies that
24 Type of Covered Product to California.

25 (c) To comply with the Target Level, testing conducted in accordance with the
26 protocol set forth in Paragraph 2.3(a) of samples selected in accordance with the protocol
27 set forth in Paragraph 2.3(b) must establish both of the following:

28 (1) The sales-weighted arithmetic mean of acrylamide levels for the

1 Covered Products ("Sales-Weighted Arithmetic Mean Concentration") is at or below 281
2 parts per billion with a 95% confidence level, i.e., $p < 0.05$. The Sales-Weighted Arithmetic
3 Mean Concentration is to be calculated using the following formula: Multiply the
4 arithmetic mean acrylamide concentration of each Group (as set forth in Exhibit A) shipped
5 for sale in California by that Group's fraction of total sales volume (net of returns) for all
6 Groups of Covered Products shipped for sale in California, and thereafter sum all such
7 adjusted concentrations for all Groups to be shipped for sale in California. For purposes of
8 this Paragraph, a Group's arithmetic mean acrylamide concentration is to be determined by
9 summing the mean acrylamide concentration of each Type of product within the Group and
10 dividing the sum by the number of Types of products in the Group for which a sample has
11 been collected.

12 (2) The arithmetic mean acrylamide concentration in each Group of
13 Covered Products (as set forth in Exhibit A) is no more than 25% higher than 281 parts per
14 billion with a 95% confidence level, i.e., $p < 0.05$. For purposes of this Paragraph, a Group's
15 arithmetic mean acrylamide concentration is to be determined by summing the mean
16 acrylamide concentration of each Type of product within the Group and dividing the sum by
17 the number of Types of products in the Group for which a sample has been collected.

18 (d) The sales volume of Covered Products in California for each Group and all
19 Groups, as shown in attached Exhibit A, shall be calculated as follows: (1) For a customer
20 with stores in California and other states, actual sales may be provided by the customer or,
21 if the customer does not provide such information to Settling Defendant, an estimate of
22 sales shall be calculated on the basis of publicly-available information by multiplying the
23 total sales to the customer by the ratio of the number of the customer's retail outlets in
24 California compared with the total number in the United States. (2) For a retail or
25 distribution customer selling only in California, the sales shall be the total sales to such
26 customer. (3) For a distribution customer with distribution in California and other states,
27 estimated sales shall be calculated by multiplying the total sales to the customer by the ratio
28 of the customer's distribution volume of Covered Products in California compared with its

1 total distribution volume of Covered Products in the United States; provided that Settling
2 Defendant shall use commercially reasonable efforts to obtain such information from each
3 distribution customer, and to the extent any distribution customer does not provide such
4 information to Settling Defendant, then California sales to that distribution customer shall
5 be estimated by applying the average 'California to national sales ratio' established for
6 Settling Defendant's sales of Covered Products to its other distribution customers that have
7 provided such information. The total California sales volume of Covered Products shall be
8 an aggregate of the sales of each of the 3 categories as calculated above in this Paragraph
9 2.3(d).

10 (e) All test results of acrylamide concentrations (without identifying private label
11 customers), once provided to the Attorney General, shall be public documents, but nothing
12 in this Consent Judgment shall preclude Settling Defendant from claiming business
13 confidentiality as to, and designating as Protected Information, sales volume (including
14 fractions of total sales volume accounted for by each Group), revenue, or profits
15 (collectively, "Business Confidential Information"). For the purposes of this Consent
16 Judgment, all elements of the Protective Order shall apply to Business Confidential
17 Information that is designated Protected Information, except that (a) Paragraphs 6, 7, 9, 16,
18 and 17 of the Protective Order do not apply to Business Confidential Information; and (b)
19 Business Confidential Information need not be consecutively Bates-numbered. The
20 Attorney General acknowledges that the Business Confidential Information, whether
21 submitted to the Attorney General before or after the Effective Date, is deemed by Snak
22 King to be, among other things, both Protected Information and proprietary and trade secret
23 information that should be exempt from disclosure under the California Public Records Act
24 (Gov't Code, §§ 6250 et seq.) or other applicable public record or freedom of information
25 law and that should be protected by the privilege set forth in Evidence Code § 1060 to the
26 fullest extent possible. Notwithstanding anything to the contrary herein or in the Protective
27 Order, at any time after four years after the Target Level has been achieved, or five years
28 from the Effective Date, whichever is later, upon Snak King's request, the People shall

1 return to Settling Defendant or destroy all Business Confidential Information Snak King has
2 submitted.

3 (f) If Settling Defendant's test results demonstrate that the Target Level has been
4 ~~achieved on or before the Compliance Date for the Covered Products shipped for sale in~~
5 California, then, on or before September 30, 2011, it shall provide the Attorney General
6 with written notice of compliance, including the calculation required to demonstrate
7 achievement of the Target Level, and test results (provided separately from any sales or
8 revenue data or related calculations, or identification of "private label" retailers).

9 Thereafter, Settling Defendant shall be required to test the Covered Products according to
10 the protocol described in this Paragraph 2.3 on two additional occasions only – once during
11 the first year and once during the second year after the Target Level has been achieved,
12 provided there is at least a nine-month interval between these two testing occasions. If
13 those additional tests confirm that the Target Level has been achieved for all of the Covered
14 Products shipped for sale in California, as determined by the protocol set forth in this
15 Paragraph 2.3, then Settling Defendant shall have no further duty to test the Covered
16 Products.

17 (g) If Settling Defendant has not achieved the Target Level by the Compliance
18 Date (including any extensions provided under Paragraph 2.4) for all of the Covered
19 Products shipped for sale in California, it shall provide warnings for the Covered Products
20 shipped for sale in California as provided herein in Paragraph 3. Settling Defendant may
21 continue testing of the Covered Products until tests demonstrate that the Target Level has
22 been achieved for all of the Covered Products shipped for sale in California, at which time,
23 upon providing the Attorney General with written notice of compliance, including the
24 calculation required to demonstrate achievement of the Target Level, and test results
25 (provided separately from any sales or revenue data or related calculations), Settling
26 Defendant shall have no further duty to warn.

27 (h) After Settling Defendant has demonstrated that the Target Level has been
28 achieved, if the Attorney General believes that the Target Level has not been achieved, the

1 Parties shall meet and confer. If, after such meet and confer, the Attorney General
2 continues to believe that the Target Level has not been achieved, the Attorney General may
3 apply to the Court for enforcement of this Consent Judgment based on results of the
4 ~~Attorney General's own testing showing that the Target Level has not been achieved. Any~~
5 data used by the Attorney General for this purpose must be the result of testing and analysis
6 performed by methods consistent with Paragraph 2.3(a) and include as many samples of
7 each Covered Product as are required by Paragraph 2.3(b). A prima facie showing of
8 violation based on such test results may be rebutted by a showing of achievement of the
9 Target Level made in compliance with all aspects of the testing and sampling protocol
10 under Paragraph 2.3.

11 2.4. *Extension of Compliance Date.* Settling Defendant may request a grace
12 period extending the Compliance Date by a period of up to three (3) months by notifying
13 the Attorney General at least ninety (90) days before the Compliance Date. The Attorney
14 General will consider the extension for good cause shown based on Settling Defendant's
15 diligence in reducing acrylamide levels in Covered Products as well as reported progress at
16 the time of the requested extension. If the Attorney General denies the extension, Settling
17 Defendant may apply to the Court to extend the Compliance Date and the Court may grant
18 the requested extension, upon timely application, for good cause shown based on Settling
19 Defendant's diligence and good faith efforts to reduce acrylamide in Covered Products as
20 well as reported progress at the time the request for extension is considered.

21 2.5. *Technology Licensing.*

22 The requirements in this Consent Judgment are not contingent upon the use of any
23 particular method to achieve the Target Level, but Settling Defendant shall license any
24 patented technology owned by Settling Defendant used to meet the Target Level, whether
25 existing or in the future, to others for use in other food products, at a commercially
26 reasonable price and using other commercially reasonable terms.

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

28 3.1. If Settling Defendant does not achieve the Target Level by the Compliance

1 Date (including any extensions provided under Paragraph 2.4), Settling Defendant shall,
2 within 30 days and until such time as it achieves the Target Level:

3 (a) provide warnings by placing a warning label as described in Paragraph 3.2 (or
4 ~~Paragraph 3.4, if applicable) on the package of all Covered Products shipped for sale in~~
5 California that Settling Defendant would need to exclude from the calculations in Paragraph
6 2.3(c) in order to achieve the Target Level; or, at Settling Defendant's option,

7 (b) provide warnings by providing signs as described in Paragraph 3.3 (or
8 Paragraph 3.4, if applicable) for all Covered Products shipped for sale in California that
9 Settling Defendant would need to exclude from the calculations in Paragraph 2.3(c) in order
10 to achieve the Target Level; or, at Settling Defendant's option,

11 (c) cease selling such Covered Product(s) shipped for sale in California that
12 Settling Defendant would need to exclude from the calculations in Paragraph 2.3(c) in order
13 to achieve the Target Level.

14 3.2. *Label Warnings.* A label warning placed on the package of a Covered
15 Product pursuant to Paragraph 3.1(a) shall either (a) conform to the requirements for the
16 "safe harbor" warning methods set out in Cal. Code Regs., tit. 27, sections 25601 et seq.,
17 and, at Settling Defendant's option, may also state that acrylamide is the chemical in
18 question; or (b) provide substantially the same information as set forth for sign warnings in
19 Paragraph 3.3(b).

20 3.3. *Sign Warnings.*

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

1 (b) *Text of Sign.* Unless modified by agreement of the Parties to this Consent
2 Judgment, or as provided in Paragraph 3.4, the sign shall contain the following text (text in
3 brackets is optional):

4 **WARNING**

5 This product contains acrylamide, a chemical known to the State of California to
6 cause cancer [and reproductive toxicity¹]. Acrylamide is not added to this food, but
7 is created when this food and certain other foods, such as French fries, chips and
8 crisps, crackers, and cookies, are cooked at high temperatures. The FDA has not
9 advised people to stop eating these snack food products or any other foods
containing acrylamide as a result of cooking. For more information, see the FDA's
website at www.fda.gov.

10 (c) *Placement of Sign.* To the extent that Settling Defendant is required to
11 provide a warning under this Consent Judgment and chooses to do so by providing signs, it
12 shall instruct retailers that the sign shall be posted as follows: on the shelf(ves) or in the
13 aisle(s) where the Covered Products for which the warning is being provided are sold;
14 unless the store has less than 7,500 square feet of retail space and no more than two cash
15 registers, in which case it may be placed at each cash register. In addition, if the store
16 operates a customer service desk or similar central facility, the sign shall also be posted at
17 that location.

18 (d) *Distribution.* Settling Defendant (or its agent) shall provide signs to retailers
19 who operate retail locations in California that are collectively responsible for at least 70
20 percent of Settling Defendant's sales in the State of California of Covered Products for
21 which the warning is being provided. Signs shall be provided with a letter substantially as
22 provided in Exhibit B, in which posting instructions are provided. The letter shall request
23 that the receiving retailer provide Settling Defendant a written acknowledgment that the
24 sign will be posted. Settling Defendant shall send a follow up letter substantially as
25 provided in Exhibit C to the same retailers who were sent the original letter and who did not

26 _____
27 ¹ The language in brackets must be added if the Covered Product(s) contain
28 acrylamide in levels exceeding the Maximum Allowable Dose Level.

1 send any acknowledgment. Settling Defendant (or its agent) shall maintain files
2 demonstrating compliance with this provision, including the letters sent and receipts of any
3 acknowledgments from retailers, which shall be provided to the Attorney General on
4 written request.

5 (e) *Effect of Prior or Subsequent Signage.* To the extent that Settling Defendant
6 is required to provide a warning under this Consent Judgment and chooses to provide signs,
7 but warning signs are in place as a result of obligations of parties other than Settling
8 Defendant, Settling Defendant may rely on such prior signage (or, in the case of signage
9 posted after the Compliance Date, subsequent signage) to satisfy its warning obligations
10 under this Consent Judgment if the signs in place materially satisfy the requirements of this
11 Section 3 for Covered Products. If the prior or subsequent signs do not materially satisfy
12 the requirements of this Section 3 for Covered Products, the Parties shall negotiate in good
13 faith regarding a modification of the required type, size, placement and language set forth in
14 Paragraph 3.3(a) – (d) in consideration of the signs already in place.

15 3.4. *Alternative Warning Language.* If any other defendant in this action is
16 allowed to provide warnings using language set forth in another consent judgment entered
17 in this case that differs from the language required by this Consent Judgment, then after the
18 Compliance Date Settling Defendant may, after providing 60 days' written notice to the
19 Attorney General, use the same warning language set forth in that other consent judgment
20 for labels or the text of signs, to the extent that such language is applicable to the Covered
21 Products, provided that the Attorney General does not make a written objection within thirty
22 days of the Attorney General's receipt of the proposed change in warning language.
23 Settling Defendant may file an application with this Court in order to resolve any objection
24 received from the Attorney General. Nothing in this Section 3.4 shall limit or otherwise
25 affect Settling Defendant's right to seek a modification of this Consent Judgment in
26 accordance with Section 5 herein.

27 3.5. *Option to Provide Warnings.*

28 (a) With respect to the Covered Products, Settling Defendant may opt to provide

1 warnings under Paragraph 3.1 and cease its acrylamide reduction efforts under Paragraph 2
2 if either or both of the following conditions have been satisfied with respect to the Covered
3 Products: (i) acrylamide warnings covering one or more products manufactured and sold by
4 other companies that are of the same type as the Covered Products appear on packages of
5 such products accounting for 20% of sales of all such products in California that are not
6 produced by Settling Defendant, based on IRI sales data; and/or (ii) non-package
7 acrylamide warnings specifically mentioning one or more such products appear at 500 or
8 more store locations in California. Nothing in this Section 3.5(a) shall limit or otherwise
9 affect Settling Defendant's right in accordance with Section 3.3(e) to rely on prior or
10 subsequent signage.

11 (b) If Settling Defendant believes either or both conditions has/have occurred
12 with respect to the Covered Products, it shall give notice of such to the Attorney General,
13 together with documentation evidencing such occurrence. Following such notice, Settling
14 Defendant and the Attorney General will promptly meet and confer regarding the situation,
15 and following a meet and confer period of no longer than 30 days, Settling Defendant, by
16 giving further notice of at least 30 days to the Attorney General, which the Attorney
17 General may extend, at the Attorney General's option, by up to 60 days, may elect to (i)
18 cease acrylamide reduction efforts with respect to the Covered Products; (ii) provide the
19 warnings required by Paragraph 3.1(a) or 3.1(b) for the Covered Products or otherwise rely
20 on signage consistent with Paragraph 3.3(e); and (iii) within 30 days make all remaining
21 payments required by Paragraph 4, if applicable, with respect to the Covered Products.

22 3.6. *Extra-Territorial Effect.* Nothing in this Consent Judgment requires that
23 warnings be given for any Covered Products that are not shipped for sale in California.

24 4. PAYMENTS

25 4.1. *Initial Civil Penalty.* Within 30 days of the Effective Date, Settling Defendant
26 shall pay a civil penalty of \$75,000 pursuant to Health & Safety Code section 25249.7,
27 subdivision (b). This payment shall be divided in accordance with Health & Safety Code
28 section 25249.12, subdivisions (c) and (d), with \$56,250 (75% of the penalty) to be

1 deposited in the Safe Drinking Water and Toxic Enforcement Fund, and \$18,750 (25% of
2 the penalty) to be paid to the Office of the Attorney General.

3 (a) The 75% share of the penalty to be deposited in the Safe Drinking Water and
4 ~~Toxic Enforcement Fund shall be paid by check payable to the Office of Environmental~~
5 Health Hazard Assessment, with the check to bear the notation "Proposition 65 – AG
6 Matter ID OK2009900946."

7 (b) The 25% share of the penalty to be paid to the Office of the Attorney General
8 shall be paid by check payable to the "California Department of Justice – Litigation Deposit
9 Fund." The check shall bear on its face "Proposition 65 Recoveries Fund" and the Attorney
10 General's internal reference number for this matter (OK2009900946). The money paid to
11 the Attorney General's Office pursuant to this paragraph shall be administered by the
12 California Department of Justice and shall be used by the Environment Section of the Public
13 Rights Division of the Attorney General's Office, until all funds are exhausted, for any of
14 the following purposes: (1) implementation of the Attorney General's authority to protect
15 the environment and natural resources of the State pursuant to Government Code section
16 12600 et seq. and as Chief Law Officer of the State of California pursuant to Article V,
17 section 13 of the California Constitution; (2) enforcement of laws related to environmental
18 protection, including, but not limited to, Chapters 6.5 and 6.95, Division 20, of the
19 California Health & Safety Code; (3) enforcement of the Unfair Competition Law, Business
20 & Professions Code section 17200 et seq., as it relates to protection of the environment and
21 natural resources of the State of California; and (4) other environmental actions that benefit
22 the State and its citizens as determined by the Attorney General. Such funding may be used
23 for the costs of the Attorney General's investigation, filing fees and other court costs,
24 payment to expert witnesses and technical consultants, purchase of equipment, laboratory
25 analyses, personnel costs, travel costs, and other costs necessary to pursue environmental
26 actions investigated or initiated by the Attorney General for the benefit of the State of
27 California and its citizens. The payment, and any interest derived therefrom, shall solely
28 and exclusively augment the budget of the Attorney General's Office as it pertains to the

1 Environment Section of the Public Rights Division and in no manner shall supplant or cause
2 any reduction of any portion of the Attorney General's budget.

3 4.2. *Final Civil Penalties.* As a further incentive for early achievement in
4 ~~acrylamide reduction, Settling Defendant shall pay an additional civil penalty ("Final Civil~~
5 ~~Penalty") to the Attorney General pursuant to Health & Safety Code section 25249.12 of~~
6 \$200,000 no later than September 30, 2011, but if Settling Defendant has achieved the
7 Target Level before the Compliance Date for all Covered Products shipped for sale in
8 California, such Final Civil Penalty shall be waived. This payment, if made, shall be
9 divided in accordance with Health & Safety Code section 25249.12, subdivisions (c) and
10 (d), with \$150,000 (75% of the penalty) to be deposited in the Safe Drinking Water and
11 Toxic Enforcement Fund, and \$50,000 (25% of the penalty) to be paid to the Office of the
12 Attorney General.

13 (a) The 75% share of the penalty to be deposited in the Safe Drinking Water and
14 Toxic Enforcement Fund shall be paid by check payable to the Office of Environmental
15 Health Hazard Assessment, with the check to bear the notation "Proposition 65 – AG
16 Matter ID OK2009900946."

17 (b) The 25% share of the penalty to be paid to the Office of the Attorney General
18 shall be paid by check payable to the "California Department of Justice – Litigation Deposit
19 Fund." The check shall bear on its face "Proposition 65 Recoveries Fund" and the Attorney
20 General's internal reference number for this matter (OK2009900946). The money paid to
21 the Attorney General's Office pursuant to this paragraph shall be administered by the
22 California Department of Justice and shall be used by the Environment Section of the Public
23 Rights Division of the Attorney General's Office, until all funds are exhausted, for any of
24 the following purposes: (1) implementation of the Attorney General's authority to protect
25 the environment and natural resources of the State pursuant to Government Code section
26 12600 et seq. and as Chief Law Officer of the State of California pursuant to Article V,
27 section 13 of the California Constitution; (2) enforcement of laws related to environmental
28 protection, including, but not limited to, Chapters 6.5 and 6.95, Division 20, of the

1 California Health & Safety Code; (3) enforcement of the Unfair Competition Law, Business
2 & Professions Code section 17200 et seq., as it relates to protection of the environment and
3 natural resources of the State of California; and (4) other environmental actions that benefit
4 ~~the State and its citizens as determined by the Attorney General. Such funding may be used~~
5 for the costs of the Attorney General's investigation, filing fees and other court costs,
6 payment to expert witnesses and technical consultants, purchase of equipment, laboratory
7 analyses, personnel costs, travel costs, and other costs necessary to pursue environmental
8 actions investigated or initiated by the Attorney General for the benefit of the State of
9 California and its citizens. The payment, and any interest derived therefrom, shall solely
10 and exclusively augment the budget of the Attorney General's Office as it pertains to the
11 Environment Section of the Public Rights Division and in no manner shall supplant or cause
12 any reduction of any portion of the Attorney General's budget.

13 4.3. *Enforcement Fund Payment.* Within 30 days of the Effective Date, Settling
14 Defendant shall pay \$15,000 to be used by the Attorney General for the enforcement of
15 Proposition 65. This payment shall be made by check payable to the "California
16 Department of Justice." The check shall bear on its face "Proposition 65 Enforcement
17 Fund" and the Attorney General's internal reference number for this matter
18 (OK2009900946). Funds paid pursuant to this paragraph shall be placed in an interest-
19 bearing Special Deposit Fund established by the Attorney General. These funds, including
20 any interest, shall be used by the Attorney General, until all funds are exhausted, for the
21 costs and expenses associated with the enforcement and implementation of Proposition 65,
22 including investigations, enforcement actions, and other litigation or activities as
23 determined by the Attorney General to be reasonably necessary to carry out his duties and
24 authority under Proposition 65. Such funding may be used for the costs of the Attorney
25 General's investigation, filing fees and other court costs, payment to expert witnesses and
26 technical consultants, purchase of equipment, travel, purchase of written materials,
27 laboratory testing, sample collection, or any other cost associated with the Attorney
28 General's duties or authority under Proposition 65. Funding placed in the Special Deposit

1 Fund pursuant to this paragraph, and any interest derived therefrom, shall solely and
2 exclusively augment the budget of the Attorney General's Office and in no manner shall
3 supplant or cause any reduction of any portion of the Attorney General's budget.

4 ~~4.4. Delivery. The payments required by this Consent Judgment shall be made as~~
5 follows:

6 (a) All payments required by Paragraphs 4.1(a) and 4.2(a) shall be sent directly
7 to:

8 Senior Accounting Officer – MS 19-B
9 Office of Environmental Health Hazard Assessment
10 P.O. Box 4010
11 Sacramento, CA 95812-0410

12 (b) All payments required by Paragraphs 4.1(b), 4.2(b), and 4.3 shall be made
13 through the delivery of separate checks to the attention of Laura J. Zuckerman, Deputy
14 Attorney General, California Department of Justice, 1515 Clay Street, 20th Floor, Oakland,
15 CA 94612, with a copy of the checks and cover letter to be sent to Robert Thomas, Legal
16 Analyst, California Department of Justice, 1515 Clay Street, 20th Floor, Oakland, CA
17 94612.

18 **5. MODIFICATION OF CONSENT JUDGMENT**

19 5.1. *Procedure for Modification.* Except as provided in Paragraph 1.4, this
20 Consent Judgment may be modified by written agreement of the Attorney General and
21 Settling Defendant, after noticed motion, and upon entry of a modified consent judgment by
22 the Court thereon, or upon motion of the Attorney General or Settling Defendant as
23 provided herein or as otherwise provided by law, and upon entry of a modified consent
24 judgment by the Court. Before either the Attorney General or Settling Defendant files an
25 application with the Court for a modification to this Consent Judgment, the Parties agree
26 that they will meet and confer on a proposed modification. If a proposed modification is
27 agreed upon, then Settling Defendant and the Attorney General will present the
28 modification to the Court by means of a stipulated modification to this Consent Judgment.
Otherwise, the Party seeking the modification shall bear the burden of establishing that the

1 modification is appropriate, either because of the occurrence of a condition set forth in this
2 Consent Judgment or as otherwise provided by law. Bases for a motion to modify under
3 this Paragraph 5 shall include, but are not limited to, the basis for a motion to modify under
4 Paragraph 5.6 herein.

5 5.2 *Other Settlements.*

6 (a) If the Attorney General agrees or has agreed in a settlement or judicially
7 entered consent judgment with another manufacturer of processed snack foods on terms, as
8 drafted or as implemented, that (i) are materially more beneficial to Settling Defendant than
9 those set forth in this Consent Judgment as to the Compliance Date, or the form, manner or
10 content of warning, or (ii) allow tortilla chips, pretzels, popcorn, extruded snacks, or other
11 chip products with a designated Target Level higher than 281 ppb to be shipped for sale
12 and/or sold in California without a warning, this may provide grounds for Settling
13 Defendant to seek modification pursuant to Paragraph 5.1.

14 (b) If the Attorney General agrees or has agreed in a settlement or judicially
15 entered consent judgment that some or all of the products sold by other companies that are
16 similar to the Covered Products do not require a warning under Proposition 65 (based on the
17 presence of acrylamide), or if a court of competent jurisdiction renders a final judgment,
18 and the judgment becomes final, that some or all of the products sold by other companies
19 that are similar to the Covered Products do not require a warning for acrylamide under
20 Proposition 65, then Settling Defendant may seek a modification of this Consent Judgment
21 to eliminate its duties to warn and/or other duties related to the reduction of acrylamide
22 levels as to its similar products.

23 5.3. *Change in Proposition 65.* If Proposition 65 or its implementing regulations
24 are changed from their terms as they exist on the date of entry of this Consent Judgment,
25 either Party or both Parties may seek modification of this Consent Judgment through
26 stipulated or noticed motion as follows:

27 (a) If the change establishes that warnings for acrylamide in Covered Products
28 are not required, Settling Defendant may seek a modification of this Consent Judgment to

1 eliminate its duties to warn and/or its duty to reduce acrylamide levels.

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

5 (c) If the change would provide a new form, manner, or content for an optional or
6 safe-harbor warning, Settling Defendant shall meet and confer with the Attorney General
7 and, following agreement (if one is reached), jointly apply to the Court for approval of a
8 plan for implementing warnings in such manner. If no agreement is reached, Settling
9 Defendant may seek a modification of this Consent Judgment to provide a new form,
10 manner, or content for an optional or safe-harbor warning. In the absence of agreement
11 between the Parties, it shall be Settling Defendant's burden to establish that the proposed
12 warning complies with any new safe harbor method of providing warnings for food that is
13 applicable to Covered Products, or that the warning is provided in a manner that complies
14 with the law and is at least as effective (i.e., is not materially less informative or likely to be
15 seen, read, and understood) as the forms of warning otherwise required by this Consent
16 Judgment.

17 5.4. *Necessary Technology Unavailability.* If Settling Defendant is unable to
18 reduce acrylamide levels in the Covered Products below the Target Level but would be able
19 to do so but for a failure by any other defendant to this action to comply with, or act
20 consistently with, technology licensing requirements in any settlement in this action with
21 the Attorney General, then Settling Defendant shall be deemed to have good cause to seek a
22 modification to this Consent Judgment that extends the Compliance Date. For the purposes
23 of this Section 5.4, "any other defendant to this action" shall include (a) such defendant, and
24 each of its affiliates, subsidiaries or any other entity in which such defendant has a direct or
25 indirect financial interest of 50% or more, and/or (b) any entity referenced in (a) above in
26 this Paragraph 5.4 that controls the patent or other intellectual property rights in such
27 technologies.

28 5.5 *Correspondence with the Federal Government.* If Settling Defendant

1 corresponds in writing to an agency or branch of the United States Government in
2 connection with the application of Proposition 65 to acrylamide in food products, then so
3 long as such correspondence does not fall within one of the exemptions to the Freedom of
4 Information Act, Settling Defendant shall provide the Attorney General with a copy of such
5 communication as soon as practicable, but not more than 10 days after sending or receiving
6 the correspondence; provided, however, that this Paragraph shall not apply to
7 correspondence solely to or from trade associations or other groups of which Settling
8 Defendant is a member, nor shall this Paragraph apply if Settling Defendant is no longer
9 required to test for acrylamide under this Consent Judgment.

10 5.6. *Federal Preemption.* If a court of competent jurisdiction or an agency of the
11 federal government (including, but not limited to, the U.S. Food and Drug Administration)
12 states, through any regulation or legally binding act, that federal law has preemptive effect
13 on any of the requirements of this Consent Judgment, including, but not limited to
14 precluding Settling Defendant from providing any of the warnings set forth in this Consent
15 Judgment or the manner in which such warnings are given, then Settling Defendant may
16 seek to modify this Consent Judgment to bring it into compliance with or avoid conflict
17 with federal law. The modification shall not be granted unless this Court concludes, in a
18 final judgment or order, that such modification is necessary to bring this Consent Judgment
19 into compliance with or avoid conflict with federal law. Specifically, a determination that
20 the provision of some, but not all, forms of warning described in Paragraph 3 above is not
21 permitted shall not relieve Settling Defendant of the duty to provide one of the other
22 warnings described under this judgment for which such determination has not been made.

23 6. **ENFORCEMENT**

24 The People may, by motion or application for an order to show cause before this
25 Court, enforce the terms and conditions contained in this Consent Judgment. In any such
26 proceeding, the People may seek whatever fines, costs, penalties, or remedies are provided
27 by law for failure to comply with this Consent Judgment, and where said violations of this
28 Consent Judgment constitute subsequent violations of Proposition 65 or other laws

1 independent of this Consent Judgment and/or those alleged in the Complaint, the People are
2 not limited to enforcement of this Consent Judgment, but may seek in another action
3 whatever fines, costs, penalties, or remedies are provided for by law for failure to comply
4 with Proposition 65 or other laws. In any action brought by the People alleging subsequent
5 violations of Proposition 65 or other laws, Settling Defendant may assert any and all
6 defenses that are available.

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

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

12 **8. CLAIMS COVERED**

13 This Consent Judgment is a full, final, and binding resolution between the People
14 and Settling Defendant, of any alleged violation of Proposition 65 or its implementing
15 regulations, Business & Professions Code sections 17200 et seq., and any other statutory,
16 regulatory or common law duty or requirement, and fully and finally resolves all claims
17 that have been or could have been asserted in the Complaint against Settling Defendant, for
18 failure to provide clear and reasonable warnings of exposure to acrylamide from the
19 consumption of the Covered Products, as well as any other claim that was alleged or could
20 have been asserted based on the facts or conduct alleged in the Complaint as to the Covered
21 Products, whether based on actions committed by Settling Defendant or by any entity or
22 person to whom it distributes or sells, and/or has distributed or sold, directly or indirectly,
23 Covered Products, or by any entity or person that has sold or sells the Covered Products to
24 consumers in the State of California, including but not limited to distributors, wholesalers
25 and retailers. Compliance with the terms of this Consent Judgment, as it may be modified,
26 resolves, as to Covered Products, including new products incorporated as Covered Products
27 under Paragraph 1.4, any issue or claim, now, in the past, and in the future, concerning
28 compliance with the requirements of Proposition 65 and its implementing regulations as to

1 the duty to warn about acrylamide in Covered Products shipped for sale in California, and
2 Business & Professions Code sections 17200 et seq. with regard to the same, by (1) Settling
3 Defendant, its parents, shareholders, directors, officers, divisions, subdivisions, subsidiaries,
4 ~~sister companies, affiliates, franchisees, cooperative members, and licensees, including, but~~
5 not limited to, Snak King Distributing, LLC, and Jensen Manufacturing Company, Inc.
6 (collectively, "Released Persons"); (2) the Released Persons' distributors, wholesalers, and
7 retailers who have sold or sell Covered Products; (3) any other entity or person in the chain
8 of distribution who has sold or sells the Covered Products; and (4) the predecessors,
9 successors, and assigns of any of them (subparts (1) – (4) above, collectively, "Affiliates").
10 The preceding sentence does not apply to, or resolve any claims against, retailers who, after
11 the Compliance Date, do not post signs sent to them pursuant to Paragraph 3.3(c) and (d).

12 **9. RETENTION OF JURISDICTION**

13 This Court shall retain jurisdiction of this matter to implement and enforce this
14 Consent Judgment. Either Party may bring a motion pursuant to the Court's continuing
15 jurisdiction requesting that the Court give full effect to any provision of this Consent
16 Judgment.

17 **10. PROVISION OF NOTICE**

18 10.1. When any Party is entitled to receive any notice under this Consent Judgment,
19 the notice shall be sent by overnight courier service to the person and address set forth in
20 this Paragraph. Any Party may modify the person and address to whom the notice is to be
21 sent by sending the other Party notice by certified mail, return receipt requested. Said
22 change shall take effect on the date the return receipt is signed by the Party receiving the
23 change.

24 10.2. Notices shall be sent to:

25 ///

26 ///

27 ///

28 ///

1 For the People/the Attorney General:

2 Laura J. Zuckerman
3 Timothy E. Sullivan
4 Deputy Attorneys General
5 1515 Clay Street, 20th Floor
6 Oakland, CA 94612

7 For Snak King Corporation:

8 Barry Levin, Chief Exec. Officer *with a copy to:* Joshua A. Bloom
9 Snak King Corporation Barg Coffin Lewis & Trapp LLP
10 16150 East Stephens Street 350 California Street, 22nd Floor
11 City of Industry, CA 91745 San Francisco, CA 94104-1435

12 and: Lee Smith
13 Law Offices of Smith and Smith
14 501 South Beverly Drive, 3rd Floor
15 Beverly Hills, CA 90212-3002

16 **11. COURT APPROVAL**

17 This Consent Judgment shall be submitted to the Court for entry by noticed motion.
18 If this Consent Judgment is not approved by the Court, it shall be of no force or effect and
19 may not be used by the Attorney General or Settling Defendant for any purpose, except that
20 the confidentiality provisions of Paragraphs 1.4(c) and (d) and 2.3(e) shall continue to
21 apply.

22 **12. ENTIRE AGREEMENT**

23 12.1. This Consent Judgment contains the sole and entire agreement and
24 understanding of the Parties with respect to the entire subject matter hereof, and any and all
25 prior discussions, negotiations, commitments and understandings related hereto. No
26 representations, oral or otherwise, express or implied, other than those contained herein
27 have been made by any Party hereto. No other agreements not specifically referred to
28 herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

12.2. This Consent Judgment is the result of mutual drafting and no ambiguity
found herein shall be construed in favor of or against any Party.

///

1 **13. EXECUTION IN COUNTERPARTS**

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

5 IT IS SO ORDERED, ADJUDGED, AND DECREED:

6
7 Dated:

AUG 31 2011

STEVEN A. BRICK

8
9

Hon. Steven A. Brick
Judge of the Superior Court

Exhibit A

COVERED PRODUCTS

CORN, GRAIN, AND LEGUME CHIPS AND STICKS

Group A. All corn, grain, and legume-based chips and sticks manufactured by Settling Defendant, including El Sabroso Guacachips, El Sabroso Jalapenitos, Private Label Tortilla Chips, Private Label Organic Blue Tortilla Chips, Private Label Organic Fiesta Tortilla Chips, Private Label Organic White Tortilla Chips, Whole Earth Really Seedy Tortilla Chips, El Sabroso Reduced Fat Tortilla Chips, Private Label Reduced Fat Tortilla Chips, Granny Goose Restaurant Style Tortilla Chips, Private Label Organic Yellow Rounds Tortilla Chips, El Sabroso Salsitas, El Sabroso Yellow Rounds Tortilla Chips, Granny Goose White Corn Tortilla Strips, Private Label White Corn Tortilla Strips, El Sabroso Chile Y Limon Churritos, El Sabroso Chile Y Limon Corn Chips, Granny Goose Corn Chips

Type 1: Triangle-shaped chips

Type 2: Round, rolled, and other non-triangle or non-strip-shaped chips

Type 3: Strip-shaped chips

Type 4: Corn chips and corn sticks (e.g., churritos)

POPCORN

Group B. All popcorn products, including Snak King Popcorn (Cheddar Cheese and Butter), Granny Goose Butter Popcorn, Kettle Corn, Whole Earth Lightly Salted Popcorn, Private Label Organic Popcorn (White Cheddar and Light Salt), Granny Goose Caramel Popcorn

Type 1: Popcorn (plain, flavored and kettle)

Type 2: Caramel and candy corn (with or without nuts)

EXTRUDED, PELLET, AND BAKED PRODUCTS

Group C. All extruded, pellet, and baked products (excluding baked products in Group A), including Private Label Lavash Chips, Private Label Salted Pita Chips, Whole Earth Salted Pita Chips, Private Label Hot Fries, Snak King Hot Fries, Private Label Puffed Rice or Corn, Snak King Cheese Puffs, Private Label Cheese Puffs, Private Label Rice Balls, Private Label Multigrain Chips, Private

Label Baked Cheese Curls, Granny Goose Cheese Blazin Curls, Snak King Baked Cheese Curls, Snak King Fried Cheese Curls, Snak King Hot Cheese Curls, Jensen Orchards Veggie Chips, Private Label Veggie Sticks, Private Label Mini Veggie Chips, El Sabroso Duros, Private Label Popped Chips

Type 1: Pita and lavash chips (all flavors)

Type 2: Puffs, fries, baked curls, and multigrain chips (all flavors)

Type 3: Fried curls (all flavors)

Type 4: Potato, vegetable, and other grain-based pellet chips and sticks (all flavors)

Type 5: Duros (all flavors)

PRETZELS

Group D. All pretzels

Type 1: Twists and sticks

OTHER

Group E. All pork rinds and “cracklins,” including El Sabroso Regular Pork Rinds, El Sabroso Regular Pork Rinds with Salsa, El Sabroso Hot & Spicy Pork Rinds, El Sabroso Regular Cracklins, and El Sabroso Hot & Spicy Cracklins.

Type 1: Pork rinds and “cracklins”

Exhibit B

(For use if Settling Defendant provides sign warnings pursuant to Paragraph 3.3)

**THIS COMMUNICATION APPLIES ONLY TO
RETAIL LOCATIONS IN CALIFORNIA**

Snak King Corporation has entered into a consent judgment with the Attorney General for the State of California regarding the presence of acrylamide in specified snack food products sold by retailers at retail locations in California.

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

We request that you post these signs on your shelf(ves) or in your aisle(s) where the identified products are sold. For stores less with than 7,500 square feet of retail space and no more than two cash registers, the sign may be placed at each cash register instead of on the shelf(ves) or in the aisle(s). Additionally, stores that operate a customer service desk or similar central facility must also post a sign at that location.

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

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

Acknowledged by:

(Signature)

(Print Name)

(Company/Store Location)

(Date)

List of Products

Exhibit C

(For use if Settling Defendant provides sign warnings pursuant to Paragraph 3.3)

**THIS COMMUNICATION APPLIES ONLY TO
RETAIL LOCATIONS IN CALIFORNIA**

On [Date], Snak King Corporation sent you a letter enclosing sign warnings for posting in your store(s) in California pursuant to a consent judgment entered into between Snak King Corporation and the Attorney General for the State of California regarding the presence of acrylamide in specified snack food products sold by retailers at retail locations in California.

These signs are to be posted on your shelf(ves) or in your aisle(s) where any of the specified snack food products identified below are sold in your stores in California. For stores with less than 7,500 square feet of retail space and no more than two cash registers, the sign may be placed at each cash register instead of on the shelf(ves) or in the aisle(s). Additionally, stores that operate a customer service desk or similar central facility must also post a sign at that location.

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

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

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

Acknowledged by:

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

List of Products