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ALAMEDA COUNTY

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By: *[Signature]* Deputy

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

15 PEOPLE OF THE STATE OF CALIFORNIA
16 ex rel. EDMUND G. BROWN JR.,
17 ATTORNEY GENERAL OF THE STATE OF
18 CALIFORNIA,

Plaintiff,

v.

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

Defendants.

CASE NO.: RG 09455286

ASSIGNED FOR ALL PURPOSES TO:

JUDGE: Hon. Steven A. Brick
DEPT: 17

[Signature]
**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT GRUMA
CORPORATION**

Date: September 30, 2010
Time: 3:00 p.m.
Dept: 17
Judge: Honorable Steven A. Brick

Reservation No.: R-1099196

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. Gruma Corporation, d/b/a Mission Foods Corporation ("Settling Defendant"),
14 is among the Defendants named in the Complaint. Settling Defendant has generally denied
15 all material allegations of the Complaint, and has asserted numerous affirmative defenses.
16 Settling Defendant specifically denies that any of its products requires a Proposition 65
17 warning or otherwise causes harm to any person. Both the People and Settling Defendant
18 shall be referred to as a "Party" to this Consent Judgment, and collectively they shall be
19 referred to herein as the "Parties" to this Consent Judgment.

20 1.3. Settling Defendant is a Nevada 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. The products covered by this Consent Judgment (hereinafter, "Covered
25 Products") are those snack food products manufactured by Settling Defendant and sold by
26 Settling Defendant or its Affiliates (as defined in Paragraph 8.1 herein) that are identified in
27 Exhibit A, including tortilla chips, taco shells, and tostadas manufactured and/or sold by
28 Settling Defendant. The Parties deem the Complaint, and by entry of this Consent

1 Judgment the Complaint shall be deemed, to have been amended to cover Settling
2 Defendant's taco shells and tostadas. After the Effective Date, should Settling Defendant
3 introduce for sale to consumers in California a snack food product not described in Exhibit
4 A, then Settling Defendant shall give notice of such new product(s) ("New Product") to the
5 Attorney General in the form of a revised version of Exhibit A. Should the Attorney
6 General object to such notice within 45 days following receipt of such notice, then the
7 Parties shall proceed in accordance with Paragraph 5.1; otherwise, this Consent Judgment
8 shall be deemed to be modified to include such product as a Covered Product.

9 1.5. For purposes of this Consent Judgment only, the People and the Settling
10 Defendant stipulate that this Court has jurisdiction over the allegations of violations
11 contained in the People's Complaint and personal jurisdiction over Settling Defendant as to
12 the acts alleged in the People's Complaint, that venue is proper in the County of Alameda,
13 and that this Court has jurisdiction to enter this Consent Judgment as a full and final
14 resolution of all claims which were or could have been raised in the Complaint based on the
15 facts alleged therein.

16 1.6. The People and Settling Defendant stipulate to the entry of this Consent
17 Judgment as a full and final settlement of all claims that were raised in the Complaint
18 (except as specified in Paragraph 8.1 herein) arising out of the facts or conduct alleged
19 therein. Except as expressly set forth herein, nothing in this Consent Judgment shall
20 prejudice, waive or impair any right, remedy, or defense the Attorney General or Settling
21 Defendant may have in any other or in future legal proceedings unrelated to these
22 proceedings. However, this paragraph shall not diminish or otherwise affect the
23 obligations, responsibilities, and duties of the Parties under this Consent Judgment.

24 1.7. By stipulating to the entry of this Consent Judgment and agreeing to provide
25 the relief and remedies specified herein, Settling Defendant does not admit (a) that it has
26 violated, or threatened to violate, Proposition 65 or Business and Professions Code sections
27 17200 et seq., or any other law or legal duty; or (b) that the chemical acrylamide in food
28 poses any risk to human health. The Parties recognize that acrylamide is naturally formed

1 when certain foods, such as the snack food products at issue in this case, are heated, and that
2 levels of acrylamide formation are due to a variety of factors, including (among others)
3 heating time and temperature.

4 1.8. The Effective Date of this Consent Judgment shall be the date on which the
5 Consent Judgment is entered as a judgment by this Court.

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

7 2.1. Target Level and Compliance Date.

8 Settling Defendant shall reduce the level of acrylamide in its Covered Products
9 shipped for sale in California after September 30, 2011 (the "Compliance Date") to 281
10 parts per billion, calculated pursuant to the protocol described in Paragraph 2.3 (the "Target
11 Level"), or be subject to the provisions of Paragraph 3. In the interim, Settling Defendant
12 shall continue its program of research, development, and implementation of technologies
13 and methods intended to reduce the presence of acrylamide in the Covered Products shipped
14 for sale in California. Settling Defendant shall endeavor in good faith, using commercially
15 and technologically reasonable efforts, to achieve the Target Level in the Covered Products
16 shipped for sale in California by the Compliance Date.

17 2.2. "Shipped for sale in California" means Covered Products that Settling
18 Defendant either directly ships into California for sale in California or that it sells to a
19 distributor who Settling Defendant knows will sell the Covered Products to consumers in
20 California. Where a retailer or distributor sells products both in California and other states,
21 Settling Defendant shall take commercially reasonable steps to ensure that, after the Target
22 Level has been reached, the only Covered Products that are sold in California are either (i)
23 Covered Products for which Settling Defendant has complied with Paragraph 2; or (ii)
24 Covered Products for which Settling Defendant has complied with Paragraph 3.

25 2.3. Standard and Verification.

26 (a) Testing for acrylamide shall be performed using either GC/MS (Gas
27 Chromatrography/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass
28 Spectrometry/Mass Spectrometry), or any other testing method agreed upon by the Parties

1 to this Consent Judgment.

2 (b) Settling Defendant shall collect, over no less than a ten-day period, a random
3 sample of each type of Covered Product listed on Exhibit A from each of at least seven (7)
4 production lots of such type of Covered Product from each location that supplies such type
5 of Covered Product to California.

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

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

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

27 (d) Sales volume for each Group and total sales volume for the Covered Products
28 shall be based upon the most current 52-week Nielsen or IRI InfoScan data (in dollars, net

1 to this Consent Judgment.

2 (b) Settling Defendant shall collect, over no less than a ten-day period, a random
3 sample of each type of Covered Product listed on Exhibit A from each of at least seven (7)
4 production lots of such type of Covered Product from each location that supplies such type
5 of Covered Product to California.

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

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

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

27 (d) Sales volume for each Group and total sales volume for the Covered Products
28 shall be based upon the most current 52-week Nielsen or IRI InfoScan data (in dollars, net

1 of returns) for Los Angeles, San Francisco/Oakland, Sacramento, and San Diego
2 metropolitan areas available to Settling Defendant as of the date of sampling.

3 (e) All test results of acrylamide concentrations, once provided to the Attorney
4 General, shall be public documents, but nothing in this Consent Judgment shall preclude
5 Settling Defendant from claiming business confidentiality as to sales volume, revenue, or
6 profits of any or all of the Covered Products.

7 (f) If Settling Defendant's test results demonstrate that the Target Level has been
8 achieved on or before the Compliance Date for the Covered Products shipped for sale in
9 California, then, on or before the Compliance Date, it shall provide the Attorney General
10 with written notice of compliance, including the calculation required to demonstrate
11 achievement of the Target Level, and test results (provided separately from any sales or
12 revenue data or related calculations). Thereafter, Settling Defendant shall be required to
13 test the Covered Products according to the protocol described in this Paragraph 2.3 on two
14 additional occasions only – once during the first year and once during the second year after
15 the Target Level has been achieved, provided there is at least a nine-month interval between
16 these two testing occasions. If those additional tests confirm that the Target Level has been
17 achieved for all of the Covered Products shipped for sale in California, as determined by the
18 protocol set forth in Paragraph 2.3, Settling Defendant shall have no further duty to test the
19 Covered Products.

20 (g) If Settling Defendant has not achieved the Target Level by the Compliance
21 Date (including any extensions provided under Paragraph 2.4) for all of the Covered
22 Products shipped for sale in California, it shall provide warnings for the Covered Products
23 shipped for sale in California as provided herein in Paragraph 3. Settling Defendant may
24 continue testing of the Covered Products until tests demonstrate that the Target Level has
25 been achieved for all of the Covered Products shipped for sale in California, at which time,
26 upon providing the Attorney General with written notice of compliance, including the
27 calculation required to demonstrate achievement of the Target Level, and test results
28 (provided separately from any sales or revenue data or related calculations), Settling

1 Defendant shall have no further duty to warn.

2 (b) After Settling Defendant has demonstrated that the Target Level has been
3 achieved, if the Attorney General believes that the Target Level has not been achieved, he
4 may apply to the Court for enforcement of this Consent Judgment based on results of the
5 Attorney General's own testing showing that the Target Level has not been achieved. Any
6 data used by the Attorney General for this purpose must be the result of testing and analysis
7 performed by methods consistent with Paragraph 2.3(a) and include as many samples of
8 each Covered Product as are required by Paragraph 2.3(b). A prima facie showing of
9 violation based on such test results may be rebutted by a showing made in compliance with
10 all aspects of the testing and sampling protocol 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 used to meet the Target Level, whether existing or in the future, to
25 others for use in other food products, at a commercially reasonable price and using other
26 commercially reasonable terms.

27 2.6. Cooking Instructions for Customers.

28 Any tortilla chip, taco shell, and tostada product that is provided by Settling

1 Defendant to a customer in uncooked form is an "Uncooked Product." For the purposes of
2 Paragraph 8 only, each Uncooked Product is a Covered Product. After the Compliance
3 Date (including any extensions provided under Paragraph 2.4), or after the Target Level has
4 been achieved, whichever is earlier, Settling Defendant must supply each customer of
5 Uncooked Product in California with (a) a copy of this Consent Judgment, and (b)
6 instructions on how to cook the Uncooked Product so that the 281 parts per billion level of
7 acrylamide in the product can be met after cooking by the customer.

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

9 3.1. If Settling Defendant does not achieve the Target Level by the Compliance
10 Date (including any extensions provided under Paragraph 2.4), Settling Defendant shall,
11 within 30 days and until such time as it achieves the Target Level, provide warnings either:

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

16 (b) by providing signs as described in Paragraph 3.3 (or Paragraph 3.4, if
17 applicable) for all Covered Products shipped for sale in California that Settling Defendant
18 would need to exclude from the calculations in Paragraph 2.3(c) in order to achieve the
19 Target Level.

20 3.2. Label Warnings. A label warning placed on the package of a Covered
21 Product pursuant to Paragraph 3.1(a) shall either (a) conform to the requirements for the
22 "safe harbor" warning methods set out in Cal. Code Regs., tit. 27, sections 25601 et seq.,
23 and, at the Settling Defendant's option, may also state that acrylamide is the chemical in
24 question; or (b) provide substantially the same information as set forth for sign warnings in
25 Paragraph 3.3(b).

26 3.3. Sign Warnings.

27 (a) Form of Sign. A warning sign shall be rectangular and at least 36 square
28 inches in size, with the word "WARNING" centered one-half of an inch from the top of the

1 sign in ITC Garamond bold condensed type face all in one-half inch capital letters. The
2 body of the warning message shall be in ITC Garamond bold condensed type face. For the
3 body of the warning message, left and right margins of at least one-half of an inch, and a
4 bottom margin of at least one-half inch shall be observed. Larger signs shall bear
5 substantially the same proportions of type size and spacing to sign dimension as a sign that
6 is 36 square inches in size.

7 (b) Text of Sign.

8 Unless modified by agreement of the Parties to this Consent Judgment, or as
9 provided in Paragraph 3.4, the sign shall contain the following text (text in brackets is
10 optional):

WARNING

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

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

26 (d) Distribution. Settling Defendant (or its agent) shall provide signs to retailers

27 ¹ The language in brackets must be added if the Office of Environmental Health
28 Hazard Assessment lists acrylamide as a reproductive toxicant under the Safe Drinking
Water and Toxic Enforcement Act of 1986 and the Covered Product(s) contain acrylamide
in levels exceeding the Maximum Allowable Dose Level.

1 who operate retail locations in California that are collectively responsible for at least 70
2 percent of Settling Defendant's sales in the State of California of Covered Products for
3 which the warning is being provided. Signs shall be provided with a letter substantially as
4 provided in Exhibit B, in which posting instructions are provided. The letter shall request
5 that the receiving retailer provide Settling Defendant a written acknowledgment that the
6 sign will be posted. Settling Defendant shall send a follow up letter substantially as
7 provided in Exhibit C to the same retailers who were sent the original letter and who did not
8 send any acknowledgment. Settling Defendant (or its agent) shall maintain files
9 demonstrating compliance with this provision, including the letters sent and receipts of any
10 acknowledgments from retailers, which shall be provided to the Attorney General on
11 written request.

12 3.4. Alternative Warning Language. If, after the Compliance Date, any other
13 defendant in this action is allowed to provide warnings using language set forth in another
14 consent judgment entered in this case that differs from the language required by this
15 Consent Judgment, then Settling Defendant may, after providing 60 days' written notice to
16 the Attorney General, use the same warning language set forth in that other consent
17 judgment for labels or the text of signs, to the extent that such language is applicable to the
18 Covered Products, provided that the Attorney General does not make a written objection
19 within thirty days of the Attorney General's receipt of the proposed change in warning
20 language. Settling Defendant may file an application with this Court in order to resolve any
21 objection received from the Attorney General.

22 3.5. Option to Provide Warnings.

23 (a) With respect to the Covered Products, Settling Defendant may opt to provide
24 warnings under Paragraph 3.1 and cease its acrylamide reduction efforts under Paragraph 2
25 if either or both of the following conditions have been satisfied with respect to the Covered
26 Products: (i) acrylamide warnings covering one or more products manufactured and sold by
27 other companies that are of the same type as the Covered Products appear on packages of
28 such products accounting for 20% of sales of all such products in California that are not

1 produced by Settling Defendant, based on IRI sales data; and/or (ii) non-package
2 acrylamide warnings specifically mentioning one or more such products appear at 500 or
3 more store locations in California.

4 (b) If Settling Defendant believes either or both conditions has/have occurred
5 with respect to the Covered Products, it shall give notice of such to the Attorney General,
6 together with documentation evidencing such occurrence. Following such notice, Settling
7 Defendant and the Attorney General will promptly meet and confer regarding the situation,
8 and following that meet and confer period of no longer than 30 days, Settling Defendant, by
9 giving further notice of at least 30 days to the Attorney General, which the Attorney
10 General may extend, at his option, by up to 60 days, may elect to (i) cease acrylamide
11 reduction efforts with respect to the Covered Products; (ii) provide the warnings required by
12 Paragraph 3.1 for the Covered Products; and (iii) within 30 days make all remaining
13 payments required by Paragraph 4 with respect to the Covered Products.

14 3.6. Extra-Territorial Effect. Nothing in this Consent Judgment requires that
15 warnings be given for any Covered Products that are not shipped for sale in California.

16 4. PAYMENTS

17 4.1. Initial Civil Penalty. Settling Defendant shall pay a civil penalty to the
18 Attorney General pursuant to Health & Safety Code section 25249.12 of \$200,000 no later
19 than 30 days after the Effective Date. This figure reflects a credit for Settling Defendant's
20 commitment to use its best efforts to achieve the Target Level no later than December 31,
21 2010 for all Covered Products shipped for sale in California. If Settling Defendant has not
22 achieved the Target Level by December 31, 2010 for all Covered Products shipped for sale
23 in California, using the methodology set forth in Paragraph 2.3, Settling Defendant shall
24 make additional monthly penalty payments, beginning January 31, 2011, and continuing
25 through May 31, 2011, for each month that Settling Defendant has not achieved the Target
26 Level for all Covered Products shipped for sale in California. These monthly payments
27 shall be as follows:

28 January 31, 2011 \$35,000

1	February 28, 2011	\$37,500
2	March 31, 2011	\$40,000
3	April 30, 2011	\$42,500
4	May 31, 2011	\$45,000

5 4.2. Interim Civil Penalty. As further incentive for early achievement in
6 acrylamide reduction, Settling Defendant shall pay an additional civil penalty to the
7 Attorney General pursuant to Health & Safety Code section 25249.12 of \$400,000 ("Interim
8 Civil Penalty") no later than June 30, 2011, but if Settling Defendant has achieved the
9 Target Level for all Covered Products shipped for sale in California before such Interim
10 Civil Penalty is due, the entire Interim Civil Penalty shall be waived.

11 4.3. Final Civil Penalties. As a further incentive for early achievement in
12 acrylamide reduction, Settling Defendant shall pay an additional civil penalty ("Final Civil
13 Penalty") to the Attorney General pursuant to Health & Safety Code section 25249.12 of
14 \$500,000 no later than the Compliance Date (without considering any extensions provided
15 under Paragraph 2.4), but if Settling Defendant has achieved the Target Level before the
16 Compliance Date (without considering any extensions provided under Paragraph 2.4) for all
17 Covered Products shipped for sale in California, such Final Civil Penalty shall be waived.

18 4.4. Enforcement Fund Payment. Within 30 days of the Effective Date, Settling
19 Defendant shall pay \$35,000 to be used by the Attorney General for the enforcement of
20 Proposition 65. Funds paid pursuant to this paragraph shall be placed in an interest-bearing
21 Special Deposit Fund established by the Attorney General. These funds, including any
22 interest, shall be used by the Attorney General, until all funds are exhausted, for the costs
23 and expenses associated with the enforcement and implementation of Proposition 65,
24 including investigations, enforcement actions, and other litigation or activities as
25 determined by the Attorney General to be reasonably necessary to carry out his duties and
26 authority under Proposition 65. Such funding may be used for the costs of the Attorney
27 General's investigation, filing fees and other court costs, payment to expert witnesses and
28 technical consultants, purchase of equipment, travel, purchase of written materials,

1 laboratory testing, sample collection, or any other cost associated with the Attorney
2 General's duties or authority under Proposition 65. Funding placed in the Special Deposit
3 Fund pursuant to this paragraph, and any interest derived therefrom, shall solely and
4 exclusively augment the budget of the Attorney General's Office and in no manner shall
5 supplant or cause any reduction of any portion of the Attorney General's budget.

6 4.5. Delivery. Each payment required by this Consent Judgment shall be made
7 through the delivery of separate checks payable to "California Department of Justice," to
8 the attention of Laura J. Zuckerman, Deputy Attorney General, California Department of
9 Justice, 1515 Clay Street, 20th Floor, Oakland, CA 94612, with a copy of the check and
10 cover letter to be sent to Robert Thomas, Legal Analyst, California Department of Justice,
11 1515 Clay Street, 20th Floor, Oakland, CA 94612.

12 5. MODIFICATION OF CONSENT JUDGMENT

13 5.1. Procedure for Modification. Except as provided in Paragraph 1.4, this
14 Consent Judgment may be modified by written agreement of the Attorney General and
15 Settling Defendant, after noticed motion, and upon entry of a modified consent judgment by
16 the Court thereon, or upon motion of the Attorney General or Settling Defendant as
17 provided herein or as otherwise provided by law, and upon entry of a modified consent
18 judgment by the Court. Before filing an application with the Court for a modification to
19 this Consent Judgment, Settling Defendant shall meet and confer with the Attorney General
20 to determine whether the Attorney General will consent to the proposed modification. If a
21 proposed modification is agreed upon, then Settling Defendant and the Attorney General
22 will present the modification to the Court by means of a stipulated modification to the
23 Consent Judgment. Otherwise, Settling Defendant shall bear the burden of establishing that
24 the modification is appropriate based on the occurrence of a condition set forth in this
25 Consent Judgment or as otherwise provided by law.

26 5.2 Other Settlements.

27 (a) If the Attorney General agrees or has agreed in a settlement or judicially
28 entered consent judgment with another manufacturer of tortilla chips, taco shells, or tostadas

1 on terms, as drafted or as implemented, that (i) are materially more beneficial to the
2 defendant than those set forth in this Consent Judgment as to the Compliance Date, or the
3 form, manner or content of warning, or (ii) allow tortilla chip, taco shell, or tostada products
4 with a designated Target Level higher than 281 ppb to be shipped for sale and/or sold in
5 California without a warning, this may provide grounds for Settling Defendant to seek
6 modification pursuant to Paragraph 5.1.

7 (b) If the Attorney General agrees or has agreed in a settlement or judicially
8 entered consent judgment that some or all products similar to the Covered Products do not
9 require a warning under Proposition 65 (based on the presence of acrylamide), or if a court
10 of competent jurisdiction renders a final judgment, and the judgment becomes final, that
11 some or all of the Covered Products (as sold by other companies) do not require a warning
12 for acrylamide under Proposition 65, then Settling Defendant may seek, but is not
13 automatically entitled to, a modification of this Consent Judgment to eliminate its duties to
14 warn and/or other duties related to the reduction of acrylamide levels as to those products.

15 5.3. Change in Proposition 65. If Proposition 65 or its implementing regulations
16 are changed from their terms as they exist on the date of entry of this Consent Judgment,
17 either Party or both Parties may seek modification of the Consent Judgment through
18 stipulated or noticed motion as follows:

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

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

25 (c) If the change would provide a new form, manner, or content for an optional or
26 safe-harbor warning, Settling Defendant shall meet and confer with the Attorney General
27 and, following agreement (if one is reached), jointly apply to the Court for approval of a
28 plan for implementing warnings in such manner. If no agreement is reached, Settling

1 Defendant may seek a modification of this Consent Judgment to provide a new form,
2 manner, or content for an optional or safe-harbor warning. In the absence of agreement
3 between the Parties, it shall be Settling Defendant's burden to establish that the proposed
4 warning complies with any new safe harbor method of providing warnings for food that is
5 applicable to Covered Products, or that the warning is provided in a manner that complies
6 with the law and is at least as effective (i.e., is not materially less informative or likely to be
7 seen, read, and understood) as the forms of warning otherwise required by this Consent
8 Judgment.

9 5.4. Correspondence with the Federal Government. If Settling Defendant
10 corresponds in writing to an agency or branch of the United States Government in
11 connection with the application of Proposition 65 to acrylamide in food products, then so
12 long as such correspondence does not fall within one of the exemptions to the Freedom of
13 Information Act, Settling Defendant shall provide the Attorney General with a copy of such
14 communication as soon as practicable, but not more than 10 days after sending or receiving
15 the correspondence; provided, however, that this Paragraph shall not apply to
16 correspondence solely to or from trade associations or other groups of which Settling
17 Defendant is a member, nor shall this Paragraph apply to the extent Settling Defendant is no
18 longer required to test for acrylamide under this Consent Judgment.

19 5.5. Federal Preemption. If a court of competent jurisdiction or an agency of the
20 federal government (including, but not limited to, the U.S. Food and Drug Administration)
21 states, through any regulation or legally binding act, that federal law has preemptive effect
22 on any of the requirements of this Consent Judgment, including, but not limited to
23 precluding Settling Defendant from providing any of the warnings set forth in this Consent
24 Judgment or the manner in which such warnings are given, then Settling Defendant may
25 seek to modify this Consent Judgment to bring it into compliance with or avoid conflict
26 with federal law. The modification shall not be granted unless this Court concludes, in a
27 final judgment or order, that such modification is necessary to bring this Consent Judgment
28 into compliance with or avoid conflict with federal law. Specifically, a determination that

1 the provision of some, but not all, forms of warning described in Paragraph 3 above is not
2 permitted shall not relieve Settling Defendant of the duty to provide one of the other
3 warnings described under this judgment for which such determination has not been made.

4 **6. ENFORCEMENT**

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

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

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

21 **8. CLAIMS COVERED**

22 This Consent Judgment is a full, final, and binding resolution between the People
23 and Settling Defendant, of any alleged violation of Proposition 65 or its implementing
24 regulations, Business & Professions Code sections 17200 et seq., and any other statutory,
25 regulatory or common law duty or requirement, and fully and finally resolves all claims that
26 have been or could have been asserted in the Complaint against Settling Defendant, for
27 failure to provide clear and reasonable warnings of exposure to acrylamide from the
28 consumption of the Covered Products, as well as any other claim based on the facts or

1 conduct alleged in the Complaint as to the Covered Products, whether based on actions
2 committed by Settling Defendant or by any entity to whom it distributes or sells Covered
3 Products, or any entity that sells the Covered Products to consumers in the state of
4 California. Compliance with the terms of this Consent Judgment resolves, as to Covered
5 Products, any issue or claim, now, in the past, and in the future, concerning compliance by
6 Settling Defendant, its parents, shareholders, divisions, subdivisions, subsidiaries, sister
7 companies, affiliates, franchisees, cooperative members, and licensees; and distributors,
8 wholesalers, and retailers who sell Covered Products; and the predecessors, successors, and
9 assigns of any of them (collectively, "Affiliates"), with the requirements of Proposition 65
10 and its implementing regulations as to the duty to warn about acrylamide in Covered
11 Products shipped for sale in California, except that this sentence does not apply to, or
12 resolve any claims against, the following entities:

13 (a) retailers who, after the Compliance Date, do not post signs sent to them
14 pursuant to Paragraph 3.3(c) and (d), and

15 (b) customers of Settling Defendant who, after the Target Level has been
16 achieved or the Compliance Date (including any extensions provided under Paragraph 2.4),
17 whichever is earlier, receive an Uncooked Product shipped for sale in California (such as
18 unfried chips) from Settling Defendant and who either:

19 (i) fail to cook the Uncooked Product in accordance with the instructions
20 provided by Settling Defendant pursuant to Paragraph 2.6, or

21 (ii) sell, distribute, or make available to any individual in California,
22 without a warning, a cooked Uncooked Product whose acrylamide level exceeds 281 parts
23 per billion at the time it is consumed by the individual.

24 9. RETENTION OF JURISDICTION

25 This Court shall retain jurisdiction of this matter to implement and enforce this
26 Consent Judgment.

27 10. PROVISION OF NOTICE

28 10.1. When any Party is entitled to receive any notice under this Consent Judgment,

1 the notice shall be sent by overnight courier service to the person and address set forth in
2 this Paragraph. Any Party may modify the person and address to whom the notice is to be
3 sent by sending the other Party notice by certified mail, return receipt requested. Said
4 change shall take effect on the date the return receipt is signed by the Party receiving the
5 change.

6 10.2. Notices shall be sent to:

7 For the People/the Attorney General:

8 Laura J. Zuckerman
9 Timothy E. Sullivan
10 Deputy Attorneys General
11 1515 Clay Street, 20th Floor
Oakland, CA 94612

12 For Gruma Corporation:

13	Attn: Legal Department	<i>with a copy to:</i>	Thomas M. Donnelly
14	Gruma Corporation		Jones Day
15	1159 Cottonwood La.		555 California Street, 26th Floor
	Irving, Texas 75038		San Francisco, CA 94104-1500

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.

20 **12. ENTIRE AGREEMENT**

21 12.1. This Consent Judgment contains the sole and entire agreement and
22 understanding of the Parties with respect to the entire subject matter hereof, and any and all
23 prior discussions, negotiations, commitments and understandings related hereto. No
24 representations, oral or otherwise, express or implied, other than those contained herein
25 have been made by any Party hereto. No other agreements not specifically referred to
26 herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

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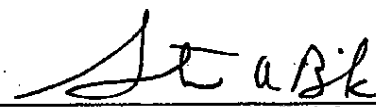
28 ///

1 12.2. This Consent Judgment is the result of mutual drafting and no ambiguity
2 found herein shall be construed in favor of or against any Party.

3 IT IS SO ORDERED, ADJUDGED, AND DECREED:

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Dated: 9-7-10



Hon. Steven A. Brick
Judge of the Superior Court

Exhibit A

COVERED PRODUCTS (COOKED)

TORTILLA CHIPS AND STRIPS

Group A.

Type

Taco Bell Red Strips

Brand

Taco Bell Red Strips

Group B. All yellow corn chips and strips manufactured by Settling Defendant, including the following:

Types

1. Yellow Round Chips (with specification of 28.5 g x 10 chips)
2. Yellow Triangle Chips (with specification of 28.5 g x 10 chips)
3. Yellow Triangle Chips (with specification of 30 g x 10 chips)
4. Any other round yellow corn chip
5. Any other triangle yellow corn chip
6. Any other yellow corn strip

Brands

Arizona Brand Yellow Round Chips

Calidad Yellow Nacho Chips

Calidad Yellow Triangle Chips

Casa Solana Triangle Yellow Chips

Casa Solana Yellow Round Chips

Don Antonio Yellow Triangle Chips

El Pasado Triangle Yellow Chips

El Pasado Yellow Round Chips

Fry's Yellow Nacho Cheese Chips

La Fiesta Triangle Yellow Chips

La Fiesta Yellow Nacho Cheese Round Chips

Mission Yellow Round Chips
Mission Brown Bag Yellow Round Chips
Mission Food Service Triangle Yellow Chips
Mission Food Service Yellow Round Chips
Montecito Yellow Nacho Cheese Round Chips
Montecito Yellow Round Chips
Montecito Yellow Triangle Chips
San Pablo Yellow Round Chips

Group C. All white corn chips and strips manufactured by Settling Defendant, including the following:

Types

1. Round White Chips (with specification of 28.5 g x 10 chips)
2. White Triangle Chips (with specification of 28.5 g x 10 chips)
3. White Strips (with specification of 24 g x 10 chips)
4. White Strips (with specification of 31 g x 10 chips)
5. Tri-Color Chips (with specification of 28.5 g x 10 chips)
6. Blue Triangle Chips (with specification of 28.5 g x 10 chips)
7. Any other round white corn chip
8. Any other triangle white corn chip
9. Any other white corn strip
10. Any other blue corn chip or strip

Brands

Casa Solana Round White Chips
Casa Solana Tri-Color Chips
Casa Solana White Triangle Chips
El Pasado Triangle Tri-Color Chips
El Pasado White Round Chips
El Pasado White Triangle Chips
Kirkland Signatures White Strips
Kroger Brown Bag White Strips
Mission Brown Bag White Strips

Mission Brown Bag White Triangle Chips
Mission Food Service Blue Triangle Chips
Mission Food Service Round White Chips
Mission Food Service Triangle Tri-Color Chips
Mission Food Service White Triangle Chips
Mission White Triangle Chips
Montecito White Strips
Ralph's Brown Bag White Strips
San Pablo White Round Chips
San Pablo White Triangle Chips

TOSTADAS

Group D.

Types

1. Yellow Tostada Casera (with specification of 101 g x 6 tostadas)
2. Yellow Tostada Casera (with specification of 113 g x 6 tostadas)
3. Tostadita Tostada Casera (with specification of 101 g x 6 tostadas)

Brands

Calidad Yellow Tostada Casera
Guerrero Tostadita Tostada Casera
Guerrero Yellow Tostada Clasica
Mission Yellow Tostada Casera
La Tapatia Tostada Casera

Group E.

Types

1. Tostada Nortena Amarillas (with specification of 70 g x 6 tostadas)
2. Tostada Nortena Rojas (with specification of 70 g x 6 tostadas)
3. Any other tostada

Brands

All other tostadas, including, but not limited to, Guerrero Tostada

Nortena.

TACO SHELLS

Group F. All taco shells manufactured by Settling Defendant, including the following:

Types

1. White Taco Shells (with specification of 4.5 oz/dz)
2. White Taco Shells (with specification of 8.4 oz/dz)
3. Yellow Taco Shells (with specification of 4.5 oz/dz)
4. Yellow Taco Shells (with specification of 5.3 oz/dz)
5. Yellow Taco Shells (with specification of 7.5 oz/dz)
6. Yellow Taco Shells (with specification of 8.4 oz/dz)
7. Any other white taco shells
8. Any other yellow taco shells

Brands

Albertsons White Taco Shells
Albertsons Jumbo White Taco Shells
Casa Solana Yellow Taco Shells
Del Taco Yellow Taco Shells
Fred Meyer Yellow Taco Shells
Fred Meyer Jumbo Yellow Taco Shells
Kroger White Taco Shells
Kroger Jumbo White Taco Shells
Mission White Taco Shells
Mission White Jumbo Taco Shells
Mission Yellow Jumbo Taco Shells
Mission Yellow Taco Shells
Mission Food Service White Taco Shells
Mission Food Service Yellow Taco Shells
Safeway White Taco Shells
Safeway Jumbo White Taco Shells
Safeway Yellow Taco Shells

Safeway Jumbo Yellow Taco Shells
San Pablo Yellow Taco Shells
Western Family Yellow Taco Shells
Western Family Jumbo Yellow Taco Shells

Exhibit B

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

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

Gruma 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, Gruma 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, Gruma 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 Gruma 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], Gruma Corporation sent you a letter enclosing sign warnings for posting in your store(s) in California pursuant to a consent judgment entered into between Gruma 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, Gruma 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 Gruma 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