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

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

ENDORSED
FILED
ALAMEDA COUNTY

AUG 31 2011

K. McCoy, Exec. Off./Clerk

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. Snyder’s of Hanover, Inc. (“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 Pennsylvania 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 herein) that are identified in
27 Exhibit A, including pretzels, tortilla chips, extruded snacks, other chips, and popcorn.
28 After the Effective Date, should Settling Defendant introduce for sale to consumers in

1 California a processed snack food product not described in Exhibit A and desire to
2 incorporate such product(s) into this consent judgment, then Settling Defendant shall give
3 notice of such new product(s) ("New Product") to the Attorney General in the form of a
4 revised version of Exhibit A. Should the Attorney General object to such notice within 45
5 days following receipt of such notice, then the Parties shall proceed in accordance with
6 Paragraph 5.1; otherwise, this Consent Judgment shall be deemed to be modified to include
7 such product as a Covered Product. Among other factors that may be considered by the
8 Attorney General when determining if an objection is warranted are acrylamide
9 concentrations in the proposed New Product(s), the product Group appropriate for the New
10 Product(s), and the effect incorporation of the New Product(s) will have on averaging or
11 sales-weighting allocations used to determine achievement of the Target Level.

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

19 1.6. The People and Settling Defendant stipulate to the entry of this Consent
20 Judgment as a full and final settlement of all claims that were raised, or could have been
21 raised, in the Complaint (except as specified in Paragraph 8 herein) arising out of the facts
22 or conduct alleged therein. Except as expressly set forth herein, nothing in this Consent
23 Judgment shall prejudice, waive or impair any right, remedy, or defense the Attorney
24 General or Settling Defendant may have in any other or in future legal proceedings
25 unrelated to these proceedings. However, this paragraph shall not diminish or otherwise
26 affect the obligations, responsibilities, and duties of the Parties under this Consent
27 Judgment.

28 1.7. By stipulating to the entry of this Consent Judgment and agreeing to provide

1 the relief and remedies specified herein, Settling Defendant does not admit (a) that it has
2 violated, or threatened to violate, Proposition 65 or Business and Professions Code sections
3 17200 et seq., or any other law or legal duty; or (b) that the chemical acrylamide in food
4 poses any risk to human health. The Parties recognize that acrylamide is naturally formed
5 when certain foods, such as the snack food products at issue in this case, are heated, and that
6 levels of acrylamide formation are due to a variety of factors, including (among others)
7 heating time and temperature.

8 1.8. The Effective Date of this Consent Judgment shall be the date on which this
9 Consent Judgment is entered as a judgment by this Court.

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

11 2.1. *Target Level and Compliance Date.*

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

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

1 2.3. *Standard and Verification.*

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

6 (b) Settling Defendant shall collect, over no less than a ten-day period, a random
7 sample of each Type of Covered Product listed on Exhibit A from each of at least five (5)
8 production lots of such Type of Covered Product from each location that supplies such
9 Type of Covered Product to California. The production lots sampled shall be drawn from at
10 least 5 unique Stock Keeping Units ("SKUs") that comprise each Type, unless (1) there are
11 fewer than 5 SKUs in that Type, in which case each SKU shall be sampled at least once, or
12 (2) fewer than 5 SKUs in that Type are produced during the period of time Settling
13 Defendant has chosen to conduct sampling to demonstrate compliance with this Consent
14 Judgment, provided that such period of time is no shorter than 60 days, in which case each
15 SKU produced during that period of time shall be sampled at least once.

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

19 (1) The sales-weighted arithmetic mean of acrylamide levels for the
20 Covered Products ("Sales-Weighted Arithmetic Mean Concentration") is at or below 281
21 parts per billion with a 95% confidence level, i.e., $p < 0.05$. The Sales-Weighted Arithmetic
22 Mean Concentration is to be calculated using the following formula: Multiply the
23 arithmetic mean acrylamide concentration of each Group (as set forth in Exhibit A) shipped
24 for sale in California by that Group's fraction of total sales volume (net of returns) for all
25 Groups of Covered Products shipped for sale in California, and thereafter sum all such
26 adjusted concentrations for all Groups to be shipped for sale in California. For purposes of
27 this Paragraph, a Group's arithmetic mean acrylamide concentration is to be determined by
28 summing the mean acrylamide concentration of each Type of product within the Group and

1 dividing the sum by the number of Types of products in the Group for which a sample has
2 been collected.

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

9 (d) Sales volume for each Group and total sales volume for the Covered Products
10 shall be based upon the most current 52-week Nielsen or IRI InfoScan data (in dollars, net
11 of returns) for the Los Angeles, San Francisco/Oakland, Sacramento, and San Diego
12 metropolitan areas available to Settling Defendant as of the date of the last sampling event
13 reported under Paragraph 2.3(b).

14 (e) All test results of acrylamide concentrations (without identifying private label
15 customers), once provided to the Attorney General, shall be public documents, but nothing
16 in this Consent Judgment shall preclude Settling Defendant from claiming business
17 confidentiality as to sales volume, revenue, profits, or identity of "private label" retailers,
18 of any or all of the Covered Products.

19 (f) If Settling Defendant's test results demonstrate that the Target Level has been
20 achieved on or before the Compliance Date for the Covered Products shipped for sale in
21 California, then, on or before the Compliance Date, it shall provide the Attorney General
22 with written notice of compliance, including the calculation required to demonstrate
23 achievement of the Target Level, and test results (provided separately from any sales or
24 revenue data or related calculations, or identification of "private label" retailers).
25 Thereafter, Settling Defendant shall be required to test the Covered Products according to
26 the protocol described in this Paragraph 2.3 on two additional occasions only – once during
27 the first year and once during the second year after the Target Level has been achieved,
28 provided there is at least a nine-month interval between these two testing occasions. If

1 those additional tests confirm that the Target Level has been achieved for all of the Covered
2 Products shipped for sale in California, as determined by the protocol set forth in this
3 Paragraph 2.3, then Settling Defendant shall have no further duty to test the Covered
4 Products.

5 (g) If Settling Defendant has not achieved the Target Level by the Compliance
6 Date (including any extensions provided under Paragraph 2.4) for all of the Covered
7 Products shipped for sale in California, it shall provide warnings for the Covered Products
8 shipped for sale in California as provided herein in Paragraph 3. Settling Defendant may
9 continue testing of the Covered Products until tests demonstrate that the Target Level has
10 been achieved for all of the Covered Products shipped for sale in California, at which time,
11 upon providing the Attorney General with written notice of compliance, including the
12 calculation required to demonstrate achievement of the Target Level, and test results
13 (provided separately from any sales or revenue data or related calculations), Settling
14 Defendant shall have no further duty to warn.

15 (h) After Settling Defendant has demonstrated that the Target Level has been
16 achieved, if the Attorney General believes that the Target Level has not been achieved, the
17 Parties shall meet and confer. If, after such meet and confer, the Attorney General
18 continues to believe that the Target Level has not been achieved, the Attorney General may
19 apply to the Court for enforcement of this Consent Judgment based on results of the
20 Attorney General's own testing showing that the Target Level has not been achieved. Any
21 data used by the Attorney General for this purpose must be the result of testing and analysis
22 performed by methods consistent with Paragraph 2.3(a) and include as many samples of
23 each Covered Product as are required by Paragraph 2.3(b). A prima facie showing of
24 violation based on such test results may be rebutted by a showing of achievement of the
25 Target Level made in compliance with all aspects of the testing and sampling protocol
26 under Paragraph 2.3.

27 2.4. *Extension of Compliance Date.* Settling Defendant may request a grace
28 period extending the Compliance Date by a period of up to three (3) months by notifying

1 the Attorney General at least ninety (90) days before the Compliance Date. The Attorney
2 General will consider the extension for good cause shown based on Settling Defendant's
3 diligence in reducing acrylamide levels in Covered Products as well as reported progress at
4 the time of the requested extension. If the Attorney General denies the extension, Settling
5 Defendant may apply to the Court to extend the Compliance Date and the Court may grant
6 the requested extension, upon timely application, for good cause shown based on Settling
7 Defendant's diligence and good faith efforts to reduce acrylamide in Covered Products as
8 well as reported progress at the time the request for extension is considered.

9 2.5. *Technology Licensing.*

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

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

16 3.1. If Settling Defendant does not achieve the Target Level by the Compliance
17 Date (including any extensions provided under Paragraph 2.4), Settling Defendant shall,
18 within 30 days and until such time as it achieves the Target Level:

19 (a) provide warnings by placing a warning label as described in Paragraph 3.2 (or
20 Paragraph 3.4, if applicable) on the package of all Covered Products shipped for sale in
21 California that Settling Defendant would need to exclude from the calculations in Paragraph
22 2.3(c) in order to achieve the Target Level; or, at Settling Defendant's option,

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

27 (c) cease selling such Covered Product(s) shipped for sale in California that
28 Settling Defendant would need to exclude from the calculations in Paragraph 2.3(c) in order

1 to achieve the Target Level.

2 3.2. *Label Warnings.* A label warning placed on the package of a Covered
3 Product pursuant to Paragraph 3.1(a) shall either (a) conform to the requirements for the
4 “safe harbor” warning methods set out in Cal. Code Regs., tit. 27, sections 25601 et seq.,
5 and, at Settling Defendant’s option, may also state that acrylamide is the chemical in
6 question; or (b) provide substantially the same information as set forth for sign warnings in
7 Paragraph 3.3(b).

8 3.3. *Sign Warnings.*

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

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

20 **WARNING**

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

28

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

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

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

21 (e) *Effect of Prior or Subsequent Signage.* To the extent that Settling Defendant
22 is required to provide a warning under this Consent Judgment and chooses to provide signs,
23 but warning signs are in place as a result of obligations of parties other than Settling
24 Defendant, Settling Defendant may rely on such prior signage (or, in the case of signage
25 posted after the Compliance Date, subsequent signage) to satisfy its warning obligations
26 under this Consent Judgment if the signs in place materially satisfy the requirements of this
27 Section 3 for Covered Products. If the prior or subsequent signs do not materially satisfy
28 the requirements of this Section 3 for Covered Products, the Parties shall negotiate in good

1 faith regarding a modification of the required type, size, placement and language set forth in
2 Paragraph 3.3(a) – (d) in consideration of the signs already in place.

3 3.4. *Alternative Warning Language.* If any other defendant in this action is
4 allowed to provide warnings using language set forth in another consent judgment entered
5 in this case that differs from the language required by this Consent Judgment, then after the
6 Compliance Date Settling Defendant may, after providing 60 days' written notice to the
7 Attorney General, use the same warning language set forth in that other consent judgment
8 for labels or the text of signs, to the extent that such language is applicable to the Covered
9 Products, provided that the Attorney General does not make a written objection within thirty
10 days of the Attorney General's receipt of the proposed change in warning language.
11 Settling Defendant may file an application with this Court in order to resolve any objection
12 received from the Attorney General. Nothing in this Section 3.4 shall limit or otherwise
13 affect Settling Defendant's right to seek a modification of this Consent Judgment in
14 accordance with Section 5 herein.

15 3.5. *Option to Provide Warnings.*

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

27 (b) If Settling Defendant believes either or both conditions has/have occurred
28 with respect to the Covered Products, it shall give notice of such to the Attorney General,

1 together with documentation evidencing such occurrence. Following such notice, Settling
2 Defendant and the Attorney General will promptly meet and confer regarding the situation,
3 and following a meet and confer period of no longer than 30 days, Settling Defendant, by
4 giving further notice of at least 30 days to the Attorney General, which the Attorney
5 General may extend, at the Attorney General's option, by up to 60 days, may elect to (i)
6 cease acrylamide reduction efforts with respect to the Covered Products; (ii) provide the
7 warnings required by Paragraph 3.1(a) or 3.1(b) for the Covered Products or otherwise rely
8 on signage consistent with Paragraph 3.3(e); and (iii) within 30 days make all remaining
9 payments required by Paragraph 4, if applicable, with respect to the Covered Products.

10 3.6. *Extra-Territorial Effect.* Nothing in this Consent Judgment requires that
11 warnings be given for any Covered Products that are not shipped for sale in California.

12 4. PAYMENTS

13 4.1. *Initial Civil Penalty.* Within 30 days of the Effective Date, Settling Defendant
14 shall pay a civil penalty of \$30,000 pursuant to Health & Safety Code section 25249.7,
15 subdivision (b). This payment shall be divided in accordance with Health & Safety Code
16 section 25249.12, subdivisions (c) and (d), with \$22,500 (75% of the penalty) to be
17 deposited in the Safe Drinking Water and Toxic Enforcement Fund, and \$7,500 (25% of the
18 penalty) to be paid to the Office of the Attorney General.

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

23 (b) The 25% share of the penalty to be paid to the Office of the Attorney General
24 shall be paid by check payable to the "California Department of Justice – Litigation Deposit
25 Fund." The check shall bear on its face "Proposition 65 Recoveries Fund" and the Attorney
26 General's internal reference number for this matter (OK2009900946). The money paid to
27 the Attorney General's Office pursuant to this paragraph shall be administered by the
28 California Department of Justice and shall be used by the Environment Section of the Public

1 Rights Division of the Attorney General's Office, until all funds are exhausted, for any of
2 the following purposes: (1) implementation of the Attorney General's authority to protect
3 the environment and natural resources of the State pursuant to Government Code section
4 12600 et seq. and as Chief Law Officer of the State of California pursuant to Article V,
5 section 13 of the California Constitution; (2) enforcement of laws related to environmental
6 protection, including, but not limited to, Chapters 6.5 and 6.95, Division 20, of the
7 California Health & Safety Code; (3) enforcement of the Unfair Competition Law, Business
8 & Professions Code section 17200 et seq., as it relates to protection of the environment and
9 natural resources of the State of California; and (4) other environmental actions that benefit
10 the State and its citizens as determined by the Attorney General. Such funding may be used
11 for the costs of the Attorney General's investigation, filing fees and other court costs,
12 payment to expert witnesses and technical consultants, purchase of equipment, laboratory
13 analyses, personnel costs, travel costs, and other costs necessary to pursue environmental
14 actions investigated or initiated by the Attorney General for the benefit of the State of
15 California and its citizens. The payment, and any interest derived therefrom, shall solely
16 and exclusively augment the budget of the Attorney General's Office as it pertains to the
17 Environment Section of the Public Rights Division and in no manner shall supplant or cause
18 any reduction of any portion of the Attorney General's budget.

19 4.2. *Final Civil Penalties.* As a further incentive for early achievement in
20 acrylamide reduction, Settling Defendant shall pay an additional civil penalty ("Final Civil
21 Penalty") to the Attorney General pursuant to Health & Safety Code section 25249.12 of
22 \$60,000 no later than the Compliance Date, but if Settling Defendant has achieved the
23 Target Level before the Compliance Date for all Covered Products shipped for sale in
24 California, such Final Civil Penalty shall be waived. This payment, if made, shall be
25 divided in accordance with Health & Safety Code section 25249.12, subdivisions (c) and
26 (d), with \$45,000 (75% of the penalty) to be deposited in the Safe Drinking Water and
27 Toxic Enforcement Fund, and \$15,000 (25% of the penalty) to be paid to the Office of the
28 Attorney General.

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

5 (b) The 25% share of the penalty to be paid to the Office of the Attorney General
6 shall be paid by check payable to the "California Department of Justice – Litigation Deposit
7 Fund." The check shall bear on its face "Proposition 65 Recoveries Fund" and the Attorney
8 General's internal reference number for this matter (OK2009900946). The money paid to
9 the Attorney General's Office pursuant to this paragraph shall be administered by the
10 California Department of Justice and shall be used by the Environment Section of the Public
11 Rights Division of the Attorney General's Office, until all funds are exhausted, for any of
12 the following purposes: (1) implementation of the Attorney General's authority to protect
13 the environment and natural resources of the State pursuant to Government Code section
14 12600 et seq. and as Chief Law Officer of the State of California pursuant to Article V,
15 section 13 of the California Constitution; (2) enforcement of laws related to environmental
16 protection, including, but not limited to, Chapters 6.5 and 6.95, Division 20, of the
17 California Health & Safety Code; (3) enforcement of the Unfair Competition Law, Business
18 & Professions Code section 17200 et seq., as it relates to protection of the environment and
19 natural resources of the State of California; and (4) other environmental actions that benefit
20 the State and its citizens as determined by the Attorney General. Such funding may be used
21 for the costs of the Attorney General's investigation, filing fees and other court costs,
22 payment to expert witnesses and technical consultants, purchase of equipment, laboratory
23 analyses, personnel costs, travel costs, and other costs necessary to pursue environmental
24 actions investigated or initiated by the Attorney General for the benefit of the State of
25 California and its citizens. The payment, and any interest derived therefrom, shall solely
26 and exclusively augment the budget of the Attorney General's Office as it pertains to the
27 Environment Section of the Public Rights Division and in no manner shall supplant or cause
28 any reduction of any portion of the Attorney General's budget.

1 4.3. *Enforcement Fund Payment.* Within 30 days of the Effective Date, Settling
2 Defendant shall pay \$15,000 to be used by the Attorney General for the enforcement of
3 Proposition 65. This payment shall be made by check payable to the "California
4 Department of Justice." The check shall bear on its face "Proposition 65 Enforcement
5 Fund" and the Attorney General's internal reference number for this matter
6 (OK2009900946). Funds paid pursuant to this paragraph shall be placed in an interest-
7 bearing Special Deposit Fund established by the Attorney General. These funds, including
8 any interest, shall be used by the Attorney General, until all funds are exhausted, for the
9 costs and expenses associated with the enforcement and implementation of Proposition 65,
10 including investigations, enforcement actions, and other litigation or activities as
11 determined by the Attorney General to be reasonably necessary to carry out his duties and
12 authority under Proposition 65. Such funding may be used for the costs of the Attorney
13 General's investigation, filing fees and other court costs, payment to expert witnesses and
14 technical consultants, purchase of equipment, travel, purchase of written materials,
15 laboratory testing, sample collection, or any other cost associated with the Attorney
16 General's duties or authority under Proposition 65. Funding placed in the Special Deposit
17 Fund pursuant to this paragraph, and any interest derived therefrom, shall solely and
18 exclusively augment the budget of the Attorney General's Office and in no manner shall
19 supplant or cause any reduction of any portion of the Attorney General's budget.

20 4.4. *Delivery.* The payments required by this Consent Judgment shall be made as
21 follows:

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

24 Senior Accounting Officer – MS 19-B
25 Office of Environmental Health Hazard Assessment
26 P.O. Box 4010
27 Sacramento, CA 95812-0410

28 (b) All payments required by Paragraphs 4.1(b), 4.2(b), and 4.3 shall be made
through the delivery of separate checks to the attention of Laura J. Zuckerman, Deputy

1 Attorney General, California Department of Justice, 1515 Clay Street, 20th Floor, Oakland,
2 CA 94612, with a copy of the checks and cover letter to be sent to Robert Thomas, Legal
3 Analyst, California Department of Justice, 1515 Clay Street, 20th Floor, Oakland, CA
4 94612.

5 **5. MODIFICATION OF CONSENT JUDGMENT**

6 5.1. *Procedure for Modification.* Except as provided in Paragraph 1.4, this
7 Consent Judgment may be modified by written agreement of the Attorney General and
8 Settling Defendant, after noticed motion, and upon entry of a modified consent judgment by
9 the Court thereon, or upon motion of the Attorney General or Settling Defendant as
10 provided herein or as otherwise provided by law, and upon entry of a modified consent
11 judgment by the Court. Before either the Attorney General or Settling Defendant files an
12 application with the Court for a modification to this Consent Judgment, the Parties agree
13 that they will meet and confer on a proposed modification. If a proposed modification is
14 agreed upon, then Settling Defendant and the Attorney General will present the
15 modification to the Court by means of a stipulated modification to this Consent Judgment.
16 Otherwise, the Party seeking the modification shall bear the burden of establishing that the
17 modification is appropriate, either because of the occurrence of a condition set forth in this
18 Consent Judgment or as otherwise provided by law. Bases for a motion to modify under
19 this Paragraph 5 shall include, but are not limited to, the basis for a motion to modify under
20 Paragraph 5.6 herein.

21 5.2 *Other Settlements.*

22 (a) If the Attorney General agrees or has agreed in a settlement or judicially
23 entered consent judgment with another manufacturer of processed snack foods on terms, as
24 drafted or as implemented, that (i) are materially more beneficial to Settling Defendant than
25 those set forth in this Consent Judgment as to the Compliance Date, or the form, manner or
26 content of warning, or (ii) allow tortilla chips, pretzels, popcorn, extruded snacks, or other
27 chip products with a designated Target Level higher than 281 ppb to be shipped for sale
28 and/or sold in California without a warning, this may provide grounds for Settling

1 Defendant to seek modification pursuant to Paragraph 5.1.

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

11 5.3. *Change in Proposition 65.* If Proposition 65 or its implementing regulations
12 are changed from their terms as they exist on the date of entry of this Consent Judgment,
13 either Party or both Parties may seek modification of this Consent Judgment through
14 stipulated or noticed motion as follows:

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

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

21 (c) If the change would provide a new form, manner, or content for an optional or
22 safe-harbor warning, Settling Defendant shall meet and confer with the Attorney General
23 and, following agreement (if one is reached), jointly apply to the Court for approval of a
24 plan for implementing warnings in such manner. If no agreement is reached, Settling
25 Defendant may seek a modification of this Consent Judgment to provide a new form,
26 manner, or content for an optional or safe-harbor warning. In the absence of agreement
27 between the Parties, it shall be Settling Defendant's burden to establish that the proposed
28 warning complies with any new safe harbor method of providing warnings for food that is

1 applicable to Covered Products, or that the warning is provided in a manner that complies
2 with the law and is at least as effective (i.e., is not materially less informative or likely to be
3 seen, read, and understood) as the forms of warning otherwise required by this Consent
4 Judgment.

5 5.4. *Necessary Technology Unavailability.* If Settling Defendant is unable to
6 reduce acrylamide levels in the Covered Products below the Target Level but would be able
7 to do so but for a failure by any other defendant to this action to comply with technology
8 licensing requirements in any settlement in this action with the Attorney General, then
9 Settling Defendant shall be deemed to have good cause to seek a modification to this
10 Consent Judgment that extends the Compliance Date. For the purposes of this Section 5.4,
11 “any other defendant to this action” shall include such defendant, and/or its affiliates,
12 subsidiaries or any other entity in which such defendant has a direct or indirect financial
13 interest of 50% or more.

14 5.5 *Correspondence with the Federal Government.* If Settling Defendant
15 corresponds in writing to an agency or branch of the United States Government in
16 connection with the application of Proposition 65 to acrylamide in food products, then so
17 long as such correspondence does not fall within one of the exemptions to the Freedom of
18 Information Act, Settling Defendant shall provide the Attorney General with a copy of such
19 communication as soon as practicable, but not more than 10 days after sending or receiving
20 the correspondence; provided, however, that this Paragraph shall not apply to
21 correspondence solely to or from trade associations or other groups of which Settling
22 Defendant is a member, nor shall this Paragraph apply if Settling Defendant is no longer
23 required to test for acrylamide under this Consent Judgment.

24 5.6. *Federal Preemption.* If a court of competent jurisdiction or an agency of the
25 federal government (including, but not limited to, the U.S. Food and Drug Administration)
26 states, through any regulation or legally binding act, that federal law has preemptive effect
27 on any of the requirements of this Consent Judgment, including, but not limited to
28 precluding Settling Defendant from providing any of the warnings set forth in this Consent

1 Judgment or the manner in which such warnings are given, then Settling Defendant may
2 seek to modify this Consent Judgment to bring it into compliance with or avoid conflict
3 with federal law. The modification shall not be granted unless this Court concludes, in a
4 final judgment or order, that such modification is necessary to bring this Consent Judgment
5 into compliance with or avoid conflict with federal law. Specifically, a determination that
6 the provision of some, but not all, forms of warning described in Paragraph 3 above is not
7 permitted shall not relieve Settling Defendant of the duty to provide one of the other
8 warnings described under this judgment for which such determination has not been made.

9 **6. ENFORCEMENT**

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

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

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

26 **8. CLAIMS COVERED**

27 This Consent Judgment is a full, final, and binding resolution between the People
28 and Settling Defendant, of any alleged violation of Proposition 65 or its implementing

1 regulations, Business & Professions Code sections 17200 et seq., and any other statutory,
2 regulatory or common law duty or requirement, and fully and finally resolves all claims that
3 have been or could have been asserted in the Complaint against Settling Defendant, for
4 failure to provide clear and reasonable warnings of exposure to acrylamide from the
5 consumption of the Covered Products, as well as any other claim that was alleged or could
6 have been asserted based on the facts or conduct alleged in the Complaint as to the Covered
7 Products, whether based on actions committed by Settling Defendant or by any entity or
8 person to whom it distributes or sells, and/or has distributed or sold, directly or indirectly,
9 Covered Products, or by any entity or person that has sold or sells the Covered Products to
10 consumers in the State of California, including but not limited to distributors, wholesalers
11 and retailers. Compliance with the terms of this Consent Judgment, as it may be modified,
12 resolves, as to Covered Products, including new products incorporated as Covered Products
13 under Paragraph 1.4, any issue or claim, now, in the past, and in the future, concerning
14 compliance with the requirements of Proposition 65 and its implementing regulations as to
15 the duty to warn about acrylamide in Covered Products shipped for sale in California, and
16 Business & Professions Code sections 17200 et seq. with regard to the same, by (1) Settling
17 Defendant, its parents, shareholders, directors, officers, divisions, subdivisions, subsidiaries,
18 sister companies, affiliates, franchisees, cooperative members, and licensees (collectively
19 "Released Persons"); (2) the Released Persons' distributors, wholesalers, and retailers who
20 have sold or sell Covered Products; (3) any other entity or person in the chain of distribution
21 who has sold or sells the Covered Products; and (4) the predecessors, successors, and
22 assigns of any of them (collectively, "Affiliates"). The preceding sentence does not apply
23 to, or resolve any claims against, retailers who, after the Compliance Date, do not post signs
24 sent to them pursuant to Paragraph 3.3(c) and (d).

25 **9. RETENTION OF JURISDICTION**

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

1 Judgment.

2 **10. PROVISION OF NOTICE**

3 10.1. When any Party is entitled to receive any notice under this Consent Judgment,
4 ~~the notice shall be sent by overnight courier service to the person and address set forth in~~
5 this Paragraph. Any Party may modify the person and address to whom the notice is to be
6 sent by sending the other Party notice by certified mail, return receipt requested. Said
7 change shall take effect on the date the return receipt is signed by the Party receiving the
8 change.

9 10.2. Notices shall be sent to:

10 For the People/the Attorney General:

11 Laura J. Zuckerman
12 Timothy E. Sullivan
13 Deputy Attorneys General
14 1515 Clay Street, 20th Floor
Oakland, CA 94612

15 For Snyder's of Hanover, Inc.:

16 Michael Anderson
17 Snyder's of Hanover, Inc.
18 1250 York Street, P.O. Box 6917
Hanover, PA 17331

with a copy to: Joshua A. Bloom
Barg Coffin Lewis & Trapp LLP
350 California Street, 22nd Floor
San Francisco, CA 94104-1435

19 **11. COURT APPROVAL**

20 This Consent Judgment shall be submitted to the Court for entry by noticed motion.
21 If this Consent Judgment is not approved by the Court, it shall be of no force or effect and
22 may not be used by the Attorney General or Settling Defendant for any purpose.

23 **12. ENTIRE AGREEMENT**

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

1 herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

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

4 **13. EXECUTION IN COUNTERPARTS**

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

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

10
11 Dated: **AUG 31 2011**

12 **STEVEN A. BRICK**
13

Hon. Steven A. Brick
14 Judge of the Superior Court
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Exhibit A

COVERED PRODUCTS

PRETZELS

Group A. All pretzels manufactured by Settling Defendant, including without limitation Butter Snaps, Butter Sesame Sticks; Rods, Dipping Sticks, Old Fashion Sticks; Milk Chocolate Pretzel Dips, White Chocolate Pretzel Dips, Chocolate Minis, Milk Chocolate Peanut Butter Sandwiches, White Crème Minis, White Crème Peanut Butter Sandwiches, Special Dark Chocolate Minis; Minis, Thins, Sticks, Snaps; Olde Tyme, Specials; P/O Jalapeno Cheddar Cheese Sandwiches, Homestyle, Dark Specials, Pumpernickel & Onion Sticks; Sourdough Hard Box, Sourdough Fat Free Nibblers; Garlic Bread Nibblers, Honey Mustard & Onion Nibblers, Buttermilk Ranch Pieces, Cheddar Cheese Pieces, Garlic Bread Pieces, Honey Mustard & Onion Pretzel Pieces, Southern BBQ Pretzel Pieces, Hot Buffalo Wing Pieces, Jalapeno Pretzel Pieces; Honey Wheat Sticks; Cheddar Sandwiches, Peanut Butter Sandwiches; Organic Honey Wheat Sticks, Organic Pumpernickel & Onion Sticks, Organic Oat Bran Sticks, Organic 8 Grains and Seeds; Original Pretzel Chips, Garden Veggie Pretzel Chips.

Type 1: Butter, Chocolate, Mini, Olde, and Sourdough

Type 2: Rod and Dark

Type 3: Seasoned Sourdough

Type 4: Honey and Sandwich

Type 5: Organic

Type 6: Pretzel Chips

TORTILLA/CORN CHIPS

Group B. All tortilla chips manufactured by Settling Defendant, including without limitation Grande MG Tortilla Chips, Grande Salsa Limon Tortilla Chips, Kr Guacamole Tortilla Chips, Pardinis Restaurant Style Tortilla Chips, Grande Original Yellow Tortilla Chips; SOH White Corn Tortilla Chips, SOH Restaurant Style Tortilla Chips, SOH Yellow Corn Tortilla Chips; Jays Hot Corn Chips.

Type 1: Cooked corn and corn chip

Type 2: Masa

EXTRUDED PRODUCTS & OTHER

Group C. All extruded products, sandwich waffles, and other chip products manufactured by Settling Defendant, including without limitation Cheddairs, Naturals White Cheddar Corn and Rice Puffs, MG White Cheddar Puffs, Naturals MG Cheese Puffs, MG Aged Cheddar Puffs, Jays Hot and Spicy Crunchies, Nature's Gate MG Cheese Puffs, Nature's Gate Corn & Rice Puffs; Jays Cheese Wheels; Multigrain French Onion Sunflower Chips, Southwestern Cheddar Sunflower Chips, Lightly Salted Sunflower Chips, French Onion Sunflower Chips, Naturals Naked MG Sunflower Chips.

Type 1: Sunflower chips and sandwich waffles

Type 2: All other

POPCORN

Group D. All popcorn products manufactured by Settling Defendant, including without limitation Jays Caramel Popcorn; Buttered Popcorn, Ok Butter Popcorn; Ok Hot Stuff Popcorn, Ok Hot Cheese Popcorn, Ok White Cheddar Popcorn, Ok Cheese Popcorn.

Type 1: All popcorn

Exhibit B

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

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

Snyder's of Hanover, Inc. 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, Snyder's of Hanover, Inc. 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, Snyder's of Hanover, Inc. 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 Snyder's of Hanover, Inc. 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], Snyder's of Hanover, Inc. sent you a letter enclosing sign warnings for posting in your store(s) in California pursuant to a consent judgment entered into between Snyder's of Hanover, Inc. 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, Snyder's of Hanover, Inc. 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 Snyder's of Hanover, Inc. 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