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16 *ex rel. Kamala D. Harris, Attorney General of the*
17 *State of California*

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 FOR THE COUNTY OF ALAMEDA

20 PEOPLE OF THE STATE OF CALIFORNIA
21 *ex rel. KAMALA D. HARRIS, ATTORNEY*
22 *GENERAL OF THE STATE OF*
23 *CALIFORNIA,*

24 Plaintiff,

25 v.

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

Defendants.

**ENDORSED
FILED
ALAMEDA COUNTY**

AUG 31 2011

K. McCoy, Exec. Off./Clerk

CASE NO.: RG 09455286

ASSIGNED FOR ALL PURPOSES TO:

JUDGE: Hon. Steven A. Brick
DEPT: 17

**~~PROPOSED~~ CONSENT JUDGMENT
AS TO DEFENDANT SNYDER'S-
LANCE, 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

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

20 1.3. Settling Defendant is a North Carolina 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 popcorn, cheese puffs, and twisters. After the Effective Date, should
28 Settling Defendant introduce for sale to consumers in California a processed snack food

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

12 1.5 At Settling Defendant's option, Settling Defendant may, no later than August
13 15, 2011, submit to the Attorney General's Office in writing a proposal to include as
14 Covered Products some or all of the processed snack food products that are, prior to or as of
15 the Effective Date, manufactured by Settling Defendant and offered for sale in the State of
16 California ("Pre-Existing Products") but that are not included in Exhibit A hereto. Such
17 proposal shall include (a) the Pre-Existing Products or groups of Pre-Existing Products
18 proposed by Settling Defendant for inclusion in a revised Exhibit A as Covered Products,
19 (b) test results from the previous 30 days showing acrylamide concentrations associated
20 with such products, (c) California sales data (set forth as pounds sold) associated with such
21 products, and (d) the Group and Type classifications that Settling Defendant proposes be
22 used for such products for purposes of Target Level calculations made pursuant to Section 2
23 herein. The Parties shall thereafter negotiate in good faith to attempt to reach agreement by
24 September 15, 2011, on an amendment to this Consent Judgment that would include some
25 or all of the Pre-Existing Products, and appropriate penalties and costs. As to any Pre-
26 Existing Product or group of Pre-Existing Products for which agreement is reached, the
27 Parties will submit to the Court, pursuant to Section 5 herein, a stipulation regarding the
28 proposed amendment to the Consent Judgment.

1 1.6. For purposes of this Consent Judgment only, the People and Settling
2 Defendant stipulate that this Court has jurisdiction over the allegations of violations
3 contained in the People's Complaint and personal jurisdiction over Settling Defendant as to
4 the acts alleged in the People's Complaint, that venue is proper in the County of Alameda,
5 and that this Court has jurisdiction to enter this Consent Judgment as a full and final
6 resolution of all claims which were or could have been raised in the Complaint based on the
7 facts alleged therein.

8 1.7. The People and Settling Defendant stipulate to the entry of this Consent
9 Judgment as a full and final settlement of all claims that were raised, or could have been
10 raised, in the Complaint (except as specified in Paragraph 8 herein) arising out of the facts
11 or conduct alleged therein. Except as expressly set forth herein, nothing in this Consent
12 Judgment shall prejudice, waive or impair any right, remedy, or defense the Attorney
13 General or Settling Defendant may have in any other or in future legal proceedings
14 unrelated to these proceedings. However, this paragraph shall not diminish or otherwise
15 affect the obligations, responsibilities, and duties of the Parties under this Consent
16 Judgment.

17 1.8. By stipulating to the entry of this Consent Judgment and agreeing to provide
18 the relief and remedies specified herein, Settling Defendant does not admit (a) that it has
19 violated, or threatened to violate, Proposition 65 or Business and Professions Code sections
20 17200 et seq., or any other law or legal duty; or (b) that the chemical acrylamide in food
21 poses any risk to human health. The Parties recognize that acrylamide is naturally formed
22 when certain foods, such as the snack food products at issue in this case, are heated, and that
23 levels of acrylamide formation are due to a variety of factors, including (among others)
24 heating time and temperature.

25 1.9. The Effective Date of this Consent Judgment shall be the date on which this
26 Consent Judgment is entered as a judgment by this Court.

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

2 2.1. *Target Level and Compliance Date.*

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

12 2.2. "Shipped for sale in California" means Covered Products that Settling
13 Defendant either directly ships into California for sale in California or that it sells to a
14 distributor who Settling Defendant knows will sell the Covered Products to consumers in
15 California. Where a retailer or distributor sells products both in California and other states,
16 Settling Defendant shall take commercially reasonable steps to ensure that, after the Target
17 Level has been reached, the only Covered Products that are sold in California are either (i)
18 Covered Products for which Settling Defendant has complied with Paragraph 2; or (ii)
19 Covered Products for which Settling Defendant has complied with Paragraph 3.

20 2.3. *Standard and Verification.*

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

25 (b) Settling Defendant shall collect, over no less than a ten-day period, a random
26 sample of each Type of Covered Product listed on Exhibit A from each of at least five (5)
27 production lots of such Type of Covered Product from each location that supplies such Type
28 of Covered Product to California. The production lots sampled shall be drawn from at least

1 5 unique Stock Keeping Units (“SKUs”) that comprise each Type, unless (1) there are fewer
2 than 5 SKUs in that Type, in which case each SKU shall be sampled at least once, or (2)
3 fewer than 5 SKUs in that Type are produced during the period of time Settling Defendant
4 has chosen to conduct sampling to demonstrate compliance with this Consent Judgment,
5 provided that such period of time is no shorter than 60 days, in which case each SKU
6 produced during that period of time shall be sampled at least once.

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

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

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

28 (d) Sales volume for each Group and total sales volume for the Covered Products

1 shall be based upon the most current 52-week Nielsen or IRI InfoScan data (in dollars, net
2 of returns) for the Los Angeles, San Francisco/Oakland, Sacramento, and San Diego
3 metropolitan areas available to Settling Defendant as of the date of the last sampling event
4 reported under Paragraph 2.3(b).

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

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

24 (g) If Settling Defendant has not achieved the Target Level by the Compliance
25 Date (including any extensions provided under Paragraph 2.4) for all of the Covered
26 Products shipped for sale in California, it shall provide warnings for the Covered Products
27 shipped for sale in California as provided herein in Paragraph 3. Settling Defendant may
28 continue testing of the Covered Products until tests demonstrate that the Target Level has

1 been achieved for all of the Covered Products shipped for sale in California, at which time,
2 upon providing the Attorney General with written notice of compliance, including the
3 calculation required to demonstrate achievement of the Target Level, and test results
4 (provided separately from any sales or revenue data or related calculations), Settling
5 Defendant shall have no further duty to warn.

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

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

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1 2.5. *Technology Licensing.*

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

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

8 3.1. If Settling Defendant does not achieve the Target Level by the Compliance
9 Date (including any extensions provided under Paragraph 2.4), Settling Defendant shall,
10 within 30 days and until such time as it achieves the Target Level:

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

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

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

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

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1 3.3. *Sign Warnings.*

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

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

13 **WARNING**

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

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

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 that location.

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

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

24 3.4. *Alternative Warning Language.* If any other defendant in this action is
25 allowed to provide warnings using language set forth in another consent judgment entered
26 in this case that differs from the language required by this Consent Judgment, then after the
27 Compliance Date Settling Defendant may, after providing 60 days' written notice to the
28 Attorney General, use the same warning language set forth in that other consent judgment

1 for labels or the text of signs, to the extent that such language is applicable to the Covered
2 Products, provided that the Attorney General does not make a written objection within thirty
3 days of the Attorney General's receipt of the proposed change in warning language.

4 Settling Defendant may file an application with this Court in order to resolve any objection
5 received from the Attorney General. Nothing in this Section 3.4 shall limit or otherwise
6 affect Settling Defendant's right to seek a modification of this Consent Judgment in
7 accordance with Section 5 herein.

8 3.5. *Option to Provide Warnings.*

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

20 (b) If Settling Defendant believes either or both conditions has/have occurred
21 with respect to the Covered Products, it shall give notice of such to the Attorney General,
22 together with documentation evidencing such occurrence. Following such notice, Settling
23 Defendant and the Attorney General will promptly meet and confer regarding the situation,
24 and following a meet and confer period of no longer than 30 days, Settling Defendant, by
25 giving further notice of at least 30 days to the Attorney General, which the Attorney
26 General may extend, at the Attorney General's option, by up to 60 days, may elect to (i)
27 cease acrylamide reduction efforts with respect to the Covered Products; (ii) provide the
28 warnings required by Paragraph 3.1(a) or 3.1(b) for the Covered Products or otherwise rely

1 on signage consistent with Paragraph 3.3(e); and (iii) within 30 days make all remaining
2 payments required by Paragraph 4, if applicable, with respect to the Covered Products.

3 3.6. *Extra-Territorial Effect.* Nothing in this Consent Judgment requires that
4 warnings be given for any Covered Products that are not shipped for sale in California.

5 **4. PAYMENTS**

6 4.1. *Civil Penalty.* Within 30 days of the Effective Date, Settling Defendant shall
7 pay a civil penalty of \$1,000 pursuant to Health & Safety Code section 25249.7, subdivision
8 (b). This payment shall be divided in accordance with Health & Safety Code section
9 25249.12, subdivisions (c) and (d), with \$750 (75% of the penalty) to be deposited in the
10 Safe Drinking Water and Toxic Enforcement Fund, and \$250 (25% of the penalty) to be
11 paid to the Office of the Attorney General.

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

16 (b) The 25% share of the penalty to be paid to the Office of the Attorney General
17 shall be paid by check payable to the "California Department of Justice – Litigation Deposit
18 Fund." The check shall bear on its face "Proposition 65 Recoveries Fund" and the Attorney
19 General's internal reference number for this matter (OK2009900946). The money paid to
20 the Attorney General's Office pursuant to this paragraph shall be administered by the
21 California Department of Justice and shall be used by the Environment Section of the Public
22 Rights Division of the Attorney General's Office, until all funds are exhausted, for any of
23 the following purposes: (1) implementation of the Attorney General's authority to protect
24 the environment and natural resources of the State pursuant to Government Code section
25 12600 et seq. and as Chief Law Officer of the State of California pursuant to Article V,
26 section 13 of the California Constitution; (2) enforcement of laws related to environmental
27 protection, including, but not limited to, Chapters 6.5 and 6.95, Division 20, of the
28 California Health & Safety Code; (3) enforcement of the Unfair Competition Law, Business

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

12 4.2. *Delivery.* The payments required by this Consent Judgment shall be made as
13 follows:

14 (a) The payment required by Paragraph 4.1(a) shall be sent directly to:

15 Senior Accounting Officer – MS 19-B
16 Office of Environmental Health Hazard Assessment
17 P.O. Box 4010
18 Sacramento, CA 95812-0410

19 (b) The payment required by Paragraph 4.1(b) shall be made through the delivery
20 of a check to the attention of Laura J. Zuckerman, Deputy Attorney General, California
21 Department of Justice, 1515 Clay Street, 20th Floor, Oakland, CA 94612, with a copy of the
22 check and cover letter to be sent to Robert Thomas, Legal Analyst, California Department
23 of Justice, 1515 Clay Street, 20th Floor, Oakland, CA 94612.

23 5. MODIFICATION OF CONSENT JUDGMENT

24 5.1. *Procedure for Modification.* Except as provided in Paragraph 1.4, this
25 Consent Judgment may be modified by written agreement of the Attorney General and
26 Settling Defendant, after noticed motion, and upon entry of a modified consent judgment by
27 the Court thereon, or upon motion of the Attorney General or Settling Defendant as
28 provided herein or as otherwise provided by law, and upon entry of a modified consent

1 judgment by the Court. Before either the Attorney General or Settling Defendant files an
2 application with the Court for a modification to this Consent Judgment, the Parties agree
3 that they will meet and confer on a proposed modification. If a proposed modification is
4 agreed upon, then Settling Defendant and the Attorney General will present the
5 modification to the Court by means of a stipulated modification to this Consent Judgment.
6 Otherwise, the Party seeking the modification shall bear the burden of establishing that the
7 modification is appropriate, either because of the occurrence of a condition set forth in this
8 Consent Judgment or as otherwise provided by law. Bases for a motion to modify under
9 this Paragraph 5 shall include, but are not limited to, the basis for a motion to modify under
10 Paragraph 5.6 herein.

11 5.2 *Other Settlements.*

12 (a) If the Attorney General agrees or has agreed in a settlement or judicially
13 entered consent judgment with another manufacturer of processed snack foods on terms, as
14 drafted or as implemented, that (i) are materially more beneficial to Settling Defendant than
15 those set forth in this Consent Judgment as to the Compliance Date, or the form, manner or
16 content of warning, or (ii) allow popcorn, cheese puffs, or twists, or other similar processed
17 snack food products, with a designated Target Level higher than 281 ppb to be shipped for
18 sale and/or sold in California without a warning, this may provide grounds for Settling
19 Defendant to seek modification pursuant to Paragraph 5.1.

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

1 5.3. *Change in Proposition 65.* If Proposition 65 or its implementing regulations
2 are changed from their terms as they exist on the date of entry of this Consent Judgment,
3 either Party or both Parties may seek modification of this Consent Judgment through
4 stipulated or noticed motion as follows:

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

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

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

23 5.4. *Necessary Technology Unavailability.* If Settling Defendant is unable to
24 reduce acrylamide levels in the Covered Products below the Target Level but would be able
25 to do so but for a failure by any other defendant to this action to comply with technology
26 licensing requirements in any settlement in this action with the Attorney General, then
27 Settling Defendant shall be deemed to have good cause to seek a modification to this
28 Consent Judgment that extends the Compliance Date. For the purposes of this Section 5.4,

1 “any other defendant to this action” shall include such defendant, and/or its affiliates,
2 subsidiaries or any other entity in which such defendant has a direct or indirect financial
3 interest of 50% or more.

4 ~~5.5 Correspondence with the Federal Government.~~ If Settling Defendant
5 corresponds in writing to an agency or branch of the United States Government in
6 connection with the application of Proposition 65 to acrylamide in food products, then so
7 long as such correspondence does not fall within one of the exemptions to the Freedom of
8 Information Act, Settling Defendant shall provide the Attorney General with a copy of such
9 communication as soon as practicable, but not more than 10 days after sending or receiving
10 the correspondence; provided, however, that this Paragraph shall not apply to
11 correspondence solely to or from trade associations or other groups of which Settling
12 Defendant is a member, nor shall this Paragraph apply if Settling Defendant is no longer
13 required to test for acrylamide under this Consent Judgment.

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

27 6. ENFORCEMENT

28 The People may, by motion or application for an order to show cause before this

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

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

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

16 **8. CLAIMS COVERED**

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

1 and retailers. Compliance with the terms of this Consent Judgment, as it may be modified,
2 resolves, as to Covered Products, including new products incorporated as Covered Products
3 under Paragraph 1.4, any issue or claim, now, in the past, and in the future, concerning
4 compliance with the requirements of Proposition 65 and its implementing regulations as to
5 the duty to warn about acrylamide in Covered Products shipped for sale in California, and
6 Business & Professions Code sections 17200 et seq. with regard to the same, by (1) Settling
7 Defendant, its parents, shareholders, directors, officers, divisions, subdivisions, subsidiaries,
8 sister companies, affiliates, franchisees, cooperative members, and licensees (collectively
9 "Released Persons"); (2) the Released Persons' distributors, wholesalers, and retailers who
10 have sold or sell Covered Products; (3) any other entity or person in the chain of distribution
11 who has sold or sells the Covered Products; and (4) the predecessors, successors, and
12 assigns of any of them (collectively, "Affiliates"). The preceding sentence does not apply
13 to, or resolve any claims against, retailers who, after the Compliance Date, do not post signs
14 sent to them pursuant to Paragraph 3.3(c) and (d).

15 **9. RETENTION OF JURISDICTION**

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

20 **10. PROVISION OF NOTICE**

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

27 10.2. Notices shall be sent to:
28

1 For the People/the Attorney General:

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

7 For Snyder's-Lance, Inc.:

8 Edward H. Schuth
9 Snyder's-Lance, Inc.
10 13024 Ballantyne Corporate Place
11 Suite 900
12 Charlotte, NC 28277

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

13 **11. COURT APPROVAL**

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

17 **12. ENTIRE AGREEMENT**

18 12.1. This Consent Judgment contains the sole and entire agreement and
19 understanding of the Parties with respect to the entire subject matter hereof, and any and all
20 prior discussions, negotiations, commitments and understandings related hereto. No
21 representations, oral or otherwise, express or implied, other than those contained herein
22 have been made by any Party hereto. No other agreements not specifically referred to
23 herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

24 12.2. This Consent Judgment is the result of mutual drafting and no ambiguity
25 found herein shall be construed in favor of or against any Party.

26 **13. EXECUTION IN COUNTERPARTS**

27 The stipulations to this Consent Judgment may be executed in counterparts and by
28 means of facsimile or electronic mail by PDF document, which taken together shall be

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1 deemed to constitute one document.

2 IT IS SO ORDERED, ADJUDGED, AND DECREED:

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4 Dated: **AUG 31 2011**

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STEVEN A. BRICK

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Hon. Steven A. Brick
Judge of the Superior Court

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Exhibit A

COVERED PRODUCTS

POPCORN

Group A. All popcorn manufactured by Settling Defendant, including but not limited to Lance White Cheddar, Lance Golden Cheddar, Lance Movie Theater Butter, Cape Cod White Cheddar, Cape Cod Sweet Cream Butter Popcorn.

Type 1: All popcorn.

CHEESE PUFFS & TWISTS

Group B. All cheese puffs and twists manufactured by Settling Defendant, including but not limited to Tom's Puffed Cheezers, Tom's Hot Crunchy Cheezers, and Tom's Crunchy Cheezers.

Type 1: All cheese puffs and twists.

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-Lance, 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-Lance, 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-Lance, 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-Lance, 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-Lance, 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-Lance, 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-Lance, 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-Lance, 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