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FILED
ALAMEDA COUNTY

APR 28 2010

CLERK OF THE SUPERIOR COURT
 By: [Signature] Deputy

10 *Attorneys for People of the State of California*
 11 *ex rel. Edmund G. Brown Jr., 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. EDMUND G. BROWN JR.,
 17 ATTORNEY 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 FRITO-LAY,
 INC.**

Date: April 28, 2010
 Time: 3:00 p.m.
 Dept: 17
 Judge: Honorable Steven A. Brick

Reservation No.: R-1052205

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. The Complaint
9 further alleges that under the Safe Drinking Water and Toxic Enforcement Act of 1986,
10 Health and Safety Code section 25249.6 *et seq.*, also known as "Proposition 65," businesses
11 must provide persons with a "clear and reasonable warning" before exposing individuals to
12 these chemicals, and that the Defendants failed to do so. The Complaint also alleges that
13 these acts constitute unlawful acts in violation of the Unfair Competition Law, pursuant to
14 Business and Professions Code sections 17200 *et seq.*

15 1.2. Frito-Lay, Inc. ("Settling Defendant") is among the Defendants named in the
16 Complaint. Both the People and Settling Defendant shall be referred to as a "Party" to this
17 Consent Judgment, and collectively they shall be referred to herein as the "Parties" to this
18 Consent Judgment.

19 1.3. Settling Defendant is a Delaware corporation that employs more than ten
20 employees, and has employed more than ten employees at some time relevant to the
21 allegations of the complaint, and that manufactures, distributes and/or sells products in the
22 State of California and has done so in the past.

23 1.4. The products covered by this Consent Judgment (hereinafter, "Covered
24 Products") are those snack food products manufactured and sold by Settling Defendant or
25 its Affiliates (as defined in Paragraph 8.1 herein) that are identified in Exhibit A, including
26 corn chips, corn puffs, pork rinds, bagel chips, pita chips, pretzels, tortilla chips, multigrain
27 chips, vegetable chips, and popcorn, and excluding Potato Crisp Products and Potato Chip
28 Products covered by the prior Consent Judgment as to Defendant Frito-Lay, Inc. in *People*

1 v. *Frito-Lay, Inc., et al.*, Case No. BC 338956, Los Angeles Superior Court (Aug. 1, 2008).
2 After the Effective Date, should Settling Defendant introduce for sale to consumers in
3 California a snack food product not described in Exhibit A, then Settling Defendant shall
4 give notice of such to the Attorney General in the form of a revised version of Exhibit A.
5 Should the Attorney General object to such notice within 30 days following receipt of such
6 notice, then the Parties shall proceed in accordance with Paragraph 5.1; otherwise, this
7 Consent Judgment shall be deemed to be modified to include such product as a Covered
8 Product.

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

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

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

1 when certain foods, such as the snack food products at issue in this case, are heated, and that
2 levels of acrylamide formation are due to a wide variety of factors in the raw material and
3 that may vary from location to location. Settling Defendant contends that the Target Level
4 set in this Consent Judgment is based on specific factors that affect acrylamide levels in the
5 Covered Products manufactured in or near California, and that the Target Level is not
6 relevant in areas outside of California where these same factors vary.

7 1.8. The Effective Date of this Consent Judgment shall be the date on which the
8 Consent Judgment is entered as a judgment by the Superior Court.

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

10 2.1. *Target Level and Target Date.* Settling Defendant shall reduce the level of
11 acrylamide in its Covered Products shipped for sale in California after September 30, 2011
12 (the "Target Date") to a level of 281 parts per billion, measured by the weighted arithmetic
13 mean pursuant to the protocol described in Paragraph 2.3 (the "Target Level") or be subject
14 to the provisions of Paragraph 3. Settling Defendant shall continue its program of research,
15 development, and implementation of technologies and methods intended to reduce the
16 presence of acrylamide in the Covered Products shipped for sale in California. Settling
17 Defendant shall endeavor in good faith, using commercially and technologically reasonable
18 efforts, to achieve the Target Level in the Covered Products shipped for sale in California
19 by the Target Date. In addition, for the purposes of this Consent Judgment, Settling
20 Defendant shall not be considered to have achieved the Target Level if, as of the Target
21 Date, the arithmetic mean of the acrylamide concentration in any Group of Covered
22 Products, as set forth in Exhibit A and as determined in accordance with the protocol
23 described in Paragraph 2.3, exceeds the Target Level by more than 25%.

24 2.2 "Shipped for sale in California" means Covered Products that Settling
25 Defendant either directly ships into California for sale in California or that it sells to a
26 distributor who Settling Defendant knows will sell the Covered Products to consumers in
27 California. Where a retailer or distributor sells Covered Products both in California and
28 other states, Settling Defendant shall take commercially reasonable steps to ensure that,

1 after the Target Level has been reached, the only Covered Products that are sold in
2 California are either (i) Covered Products included in the weighted arithmetic mean for
3 which the Target Level has been achieved; or (ii) Covered Products for which Settling
4 Defendant has complied with Paragraph 3.

5 2.3. *Testing.*

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

10 (b) Representative samples of each of the Covered Products to be tested for
11 purposes of demonstrating compliance with the Target Level must be taken over no less
12 than a ten-day period from at least ten batches of such Covered Products produced at
13 locations that supply such Covered Products to California.

14 (c) To comply with the Target Level, testing must establish that the weighted
15 arithmetic mean of the samples is at or below the Target Level with a 95% confidence level,
16 i.e., $p < 0.05$, using stratified random sampling.

17 (d) The weighted arithmetic mean is to be calculated by the following formula:
18 Multiply the arithmetic mean of the acrylamide concentration (established by the sampling
19 methodology) of all products within a Group (as set forth in Exhibit A) by that Group's
20 fraction of total sales volume (net of returns) for all Groups to be included in the weighted
21 arithmetic mean of the Covered Products, and thereafter sum all such adjusted
22 concentrations for all Groups that are required to be included in the weighted arithmetic
23 mean. Sales volume for each Group and for total sales volume for the Covered Products
24 shall be based upon the most current 52-week IRI InfoScan data (in dollars, net of returns)
25 for the Los Angeles, San Francisco/Oakland, San Diego and Sacramento metropolitan areas
26 available to Settling Defendant as of the date of sampling.

27 (e) All test results of acrylamide concentrations, once provided to the Attorney
28 General, shall be public documents, but nothing in this Consent Judgment shall preclude

1 Settling Defendant from claiming business confidentiality as to sales volumes of any or all
2 of the Covered Products.

3 (f) Testing of Covered Products to demonstrate compliance with this Paragraph 2
4 shall be conducted and/or supervised by either (i) a third party under contract to and paid by
5 Settling Defendant or (ii) with the Attorney General's prior approval, Settling Defendant
6 itself under a protocol previously approved by the Attorney General.

7 2.4. *Verification and Warnings*

8 (a) If Settling Defendant's test results demonstrate that the Target Level has been
9 achieved for the Covered Products, Settling Defendant shall be required to test each of the
10 Covered Products on two additional occasions only: once during the first year and once
11 during the second year after the Target Level has been achieved, provided that there is at
12 least a six-month interval between these two testing occasions. If those tests confirm that
13 the Target Level has been achieved for the Covered Products, Settling Defendant shall have
14 no further duty to test the Covered Products.

15 (b) If Settling Defendant has not achieved the Target Level for the Covered
16 Products by the Target Date (including any extensions provided under Paragraph 2.5), it
17 shall provide warnings for the Covered Products as provided herein in Paragraph 3. Settling
18 Defendant may also continue testing of the Covered Products until tests demonstrate that
19 the Target Level has been achieved for the Covered Products, at which time Settling
20 Defendant shall have no further duty to warn.

21 (c) After Settling Defendant has demonstrated that the Target Level has been
22 achieved and has fulfilled its duty to test the Covered Products, if the Attorney General
23 believes that the Target Level has not been achieved, he may apply to the Court for
24 enforcement of this Consent Judgment. Any test data used by the Attorney General for this
25 purpose must be performed and analyzed by methods consistent with Paragraph 2.3(a) and
26 include at least ten samples of each Group of the Covered Products. A prima facie showing
27 of violation based on such test results may be rebutted by a showing made in compliance
28 with all aspects of the testing and sampling protocol of Paragraph 2.3.

1 2.5. *Extension of Target Dates.* At least 90 days prior to the Target Date, Settling
2 Defendant may initiate a meet and confer session with the Attorney General regarding a
3 possible extension of the Target Date. Upon timely application to the Court prior to the
4 passing of the Target Date, and for good cause shown based on Settling Defendant's
5 diligence and good faith efforts as well as reported progress to date, this Consent Judgment
6 shall be modified to extend the Target Date by no more than three (3) months.

7 2.6. *Technology Licensing.* The requirements in this Consent Judgment are not
8 contingent upon the use of any particular method to achieve the Target Level, but
9 Settling Defendant shall license any patented technology used to meet the Target Level,
10 whether existing or in the future, to others for use in other food products, at a
11 commercially reasonable price and using other commercially reasonable terms.

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

13 3.1. *Warnings in General.* If Settling Defendant does not achieve the Target Level
14 by the applicable Target Date, Settling Defendant shall within 30 days and until such time
15 as it achieves the Target Level provide warnings either:

16 (a) by placing a warning label as described in Paragraph 3.2 on the package of all
17 Covered Products that Settling Defendant would be required to exclude from the calculation
18 of the weighted arithmetic mean to achieve the Target Level for the Covered Products;

19 or, at Settling Defendant's option,

20 (b) by providing signs as described in Paragraph 3.3 for all Covered Products that
21 Settling Defendant would be required to exclude from the calculation of the weighted
22 arithmetic mean to achieve the Target Level for the Covered Products.

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

1 conjunction with one or more retailers, desire to provide the warning via sales receipts or
2 other information provided to each customer at checkout, or should Proposition 65 or its
3 implementing regulations be changed from their terms as they exist on the date of entry of
4 this Consent Judgment to provide a new manner or language for an optional safe harbor
5 warning, then Settling Defendant shall meet and confer with the Attorney General and,
6 following agreement, jointly apply to the Court for approval of a plan for implementing
7 warnings in such manner. Such plan shall be approved only upon a showing that the
8 warning provided in such manner will comply with the law and be at least as effective as
9 the forms of warnings otherwise required by this Consent Judgment.

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

22 3.4. *Option to Provide Warnings.*

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

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

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

14 3.5. *Extra-Territorial Effect.* Nothing in this Consent Judgment requires that
15 warnings be given for any Covered Products sold outside the State of California.

16 3.6. *Cessation of Warnings.* -If Settling Defendant has demonstrated by testing that
17 it has achieved the Target Level for any or all Covered Products after providing warnings
18 for such Covered Products under Paragraph 3, then Settling Defendant may cease providing
19 warnings for such Covered Products.

20 4. PAYMENTS

21 4.1. *Initial Civil Penalty.* Settling Defendant shall pay a civil penalty to the
22 Attorney General pursuant to Health & Safety Code section 25249.12 of \$375,000 no later
23 than 30 days after the Effective Date.

24 4.2. *Interim Civil Penalty.* As an incentive for early achievement in acrylamide
25 reduction, Settling Defendant shall pay an additional civil penalty to the Attorney General
26 pursuant to Health & Safety Code section 25249.12 of \$550,000 ("Interim Civil Penalty")
27 no later than six months after the Effective Date, but if Settling Defendant has achieved the
28 Target Level for one or more of the Groups specified in Exhibit A before such Interim Civil

1 Penalty is due, then a portion of the Interim Civil Penalty will be waived in proportion to
2 the percentage of total sales volume of the Covered Products represented by the sales
3 volume of the Group or Groups for which Settling Defendant has achieved the Target Level
4 (the Group's "pro rata share"), so that if Settling Defendant has achieved the Target Level
5 (as defined in Paragraph 2.1) with respect to all Covered Products before such payment is
6 due, the entire Interim Civil Penalty shall be waived. Each Group's pro rata share of the
7 Interim Civil Penalty is to be calculated by the following formula: Multiply that Group's
8 fraction of the total sales volume (net of returns) for all Groups listed in Exhibit A by
9 \$550,000. Sales volume for each Group and for total sales volume for the Covered
10 Products shall be based upon the most current 52 week IRI InfoScan data (in dollars, net of
11 returns) for the Los Angeles, San Francisco/Oakland, San Diego and Sacramento
12 metropolitan areas available to Settling Defendant as of 30 days before the date the Interim
13 Civil Penalty is due.

14 4.3. *Final Civil Penalties.* As a further incentive for early achievement in
15 acrylamide reduction, Settling Defendant shall pay an additional civil penalty ("Final Civil
16 Penalty") to the Attorney General pursuant to Health & Safety Code section 25249.12 of
17 \$1,700,000 no later than the Target Date (without considering any extensions provided
18 under Paragraph 2.5), but if Settling Defendant has achieved the Target Level before the
19 Target Date (without considering any extensions provided under Paragraph 2.5), such Final
20 Civil Penalty shall be waived.

21 4.4. *Enforcement Fund Payment.* Within 30 days of the Effective Date, Settling
22 Defendant shall pay \$50,000 to be used by the Attorney General for the enforcement of
23 Proposition 65: Funds paid pursuant to this paragraph shall be placed in an interest-bearing
24 Special Deposit Fund established by the Attorney General. These funds, including any
25 interest, shall be used by the Attorney General, until all funds are exhausted, for the costs
26 and expenses associated with the enforcement and implementation of Proposition 65,
27 including investigations, enforcement actions, other litigation or activities as determined by
28 the Attorney General to be reasonably necessary to carry out his duties and authority under

1 Proposition 65. Such funding may be used for the costs of the Attorney General's
2 investigation, filing fees and other court costs, payment to expert witnesses and technical
3 consultants, purchase of equipment, travel, purchase of written materials, laboratory testing,
4 sample collection, or any other cost associated with the Attorney General's duties or
5 authority under Proposition 65. Funding placed in the Special Deposit Fund pursuant to this
6 paragraph, and any interest derived therefrom, shall solely and exclusively augment the
7 budget of the Attorney General's Office and in no manner shall supplant or cause any
8 reduction of any portion of the Attorney General's budget.

9 4.5. *Delivery.* Each payment required by this Consent Judgment shall be made
10 through the delivery of separate checks payable to "California Department of Justice," to
11 the attention of Laura J. Zuckerzman, Deputy Attorney General, California Department of
12 Justice, 1515 Clay Street, 20th Floor, Oakland, CA 94612, with a copy of the check and
13 cover letter to be sent to Robert Thomas, Legal Analyst, California Department of Justice,
14 1515 Clay Street, 20th Floor, Oakland, CA 94612.

15 5. MODIFICATION OF CONSENT JUDGMENT

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

1 5.2. *Duty to Warn.* If the Attorney General agrees in a settlement or judicially
2 entered consent judgment that one or more products manufactured and sold by other
3 companies that are of the same type as the Covered Products do not require a warning for
4 acrylamide under Proposition 65, or if a court of competent jurisdiction renders a final
5 judgment, and the judgment becomes final, that one or more products manufactured and
6 sold by other companies that are of the same type as the Covered Products do not require a
7 warning for acrylamide under Proposition 65, then the duty to warn under Paragraph 3 of
8 this Consent Judgment and the duty to reduce acrylamide levels under Paragraph 2 of this
9 Consent Judgment shall be eliminated with respect to such portion (or all) of the Covered
10 Products as is appropriate, except that, in the event that such final judgment is not binding
11 on the Attorney General, the Court may determine whether (or the extent to which) Settling
12 Defendant's duties should be eliminated or modified considering other equitable and legal
13 factors.

14 5.3. *Manner or Form of Warning.* If the Attorney General subsequently agrees in
15 a settlement or judicially entered consent judgment, or if a court of competent jurisdiction
16 renders a final judgment, and the judgment becomes final, that warnings under Proposition
17 65 (based on the presence of acrylamide) for one or more products manufactured and sold
18 by other companies that are of the same type as the Covered Products may be provided in a
19 manner or form different from that set forth in this Consent Judgment, then the manner and
20 form of warning set forth in this Consent Judgment shall be modified to entitle Settling
21 Defendant to provide warnings in such other manner or form, except that, in the event that
22 such final judgment is not binding on the Attorney General, the Court may determine
23 whether (or the extent to which) Settling Defendant's duties should be eliminated or
24 modified considering other equitable and legal factors.

25 5.4. *Change in Proposition 65.* If Proposition 65 or its implementing regulations
26 (including the "safe harbor no significant risk level" for acrylamide set forth at Cal. Code
27 Regs., tit. 27, section 25705, subdivision (c)(2)) are changed from their terms as they exist
28 on the date of entry of this Consent Judgment to establish that warnings for acrylamide in

1 some or all of the Covered Products are not required, then this Consent Judgment will be
2 modified to relieve Settling Defendant of its obligations with respect to such portion of the
3 Covered Products as is appropriate. The Parties recognize that the Target Level is based on
4 a compromise of a number of issues, and that an increase in the "safe harbor no significant
5 risk level" above the current 0.2 micrograms per day would not necessarily entitle Settling
6 Defendant to a modification of the terms of this Consent Judgment.

7 **5.5. Federal Preemption.** If a court of competent jurisdiction or an agency of the
8 federal government, including, but not limited to the U.S. Food and Drug Administration,
9 states through any regulation or legally binding act that federal law has preemptive effect on
10 any of the requirements of this Consent Judgment, including, but not limited to precluding
11 Settling Defendant from providing any of the warnings set forth in this Consent Judgment
12 or the manner in which such warnings are given, then this Consent Judgment will be
13 modified to bring it into compliance with or avoid conflict with federal law, but the
14 modification shall not be granted unless this Court concludes, in a final judgment or order,
15 that such modification is necessary to bring this Consent Judgment into compliance with or
16 avoid conflict with federal law. Specifically, a determination that the provision of some,
17 but not all, forms of warning described in Paragraph 3 above is not permitted shall not
18 relieve Settling Defendant of the duty to provide one of the other warnings described under
19 this judgment for which such determination has not been made.

20 **5.6. Scientific Review.** If an agency of the federal government, including but not
21 limited to the U.S. Food and Drug Administration, determines in an official communication,
22 regulation, or legally binding act, following a thorough review of the available scientific
23 studies and opportunity for public comment, a cancer potency estimate (Q*) for acrylamide
24 that equates to a no significant risk level of 1.0 mcg/day or higher, Settling Defendant or its
25 representative (including a coalition or trade association) may petition the California Office
26 of Environmental Health Hazard Assessment ("OEHHA") to revise the no significant risk
27 level for acrylamide set forth at Cal. Code Regs., tit. 27, section 25705, subdivision (c)(2),
28 in light of such federal action. If the Target Date (including any extensions under Paragraph

1 2.5) falls after the date of the federal agency determination noted above, but before OEHHA
2 has issued a final decision on the petition, then the Target Date will be extended to such
3 date as is 90 days after the date on which OEHHA issues a final decision on such petition.

4 **6. ENFORCEMENT**

5 6.1. The People may, by motion or application for an order to show cause before
6 this Court, enforce the terms and conditions contained in this Consent Judgment. In any
7 such proceeding, the People may seek whatever fines, costs, penalties, or remedies are
8 provided by law for failure to comply with the Consent Judgment and where said violations
9 of this Consent Judgment constitute subsequent violations of Proposition 65 or other laws
10 independent of the Consent Judgment and/or those alleged in the Complaint, the People are
11 not limited to enforcement of the Consent Judgment, but may seek in another action
12 whatever fines, costs, penalties, or remedies are provided for by law for failure to comply
13 with Proposition 65 or other laws. In any action brought by the People alleging subsequent
14 violations of Proposition 65 or other laws, Settling Defendant may assert any and all
15 defenses that are available.

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

17 7.1. Each signatory to the Parties' stipulation for entry of this Consent Judgment
18 certifies that he or she is fully authorized by the Party he or she represents to stipulate to this
19 Consent Judgment and to enter into and execute the stipulation on behalf of the Party
20 represented and legally to bind that Party.

21 **8. CLAIMS COVERED**

22 8.1. This Consent Judgment is a full, final, and binding resolution between the
23 People and Settling Defendant of any violation of Proposition 65, Business & Professions
24 Code sections 17200 *et seq.*, or any other statutory or common law claims that have been or
25 could have been asserted in the Complaint against Settling Defendant for failure to provide
26 clear and reasonable warnings of exposure to acrylamide from the consumption of the
27 Covered Products, or any other claim based on the facts or conduct alleged in the Complaint
28 as to the Covered Products, whether based on actions committed by Settling Defendant or

1 by any entity to whom it distributes or sells Covered Products, or any entity that sells the
2 Covered Products to consumers in the state of California except for sales of Covered
3 Products by retailers during any period in which such retailers have not posted signs sent to
4 them pursuant to Paragraph 3.3(d). With this one exception, as to Covered Products,
5 compliance with the terms of this Consent Judgment resolves any issue now, in the past,
6 and in the future concerning compliance by Settling Defendant, its parents, shareholders,
7 divisions, subdivisions, subsidiaries, sister companies, affiliates, franchisees, cooperative
8 members, and licensees; their distributors, wholesalers, and retailers who sell Covered
9 Products; and the predecessors, successors, and assigns of any of them (collectively,
10 "Affiliates"), with the requirements of Proposition 65 as to acrylamide in the Covered
11 Products.

12 **9. RETENTION OF JURISDICTION**

13 9.1. This Court shall retain jurisdiction of this matter to implement the Consent
14 Judgment.

15 **10. PROVISION OF NOTICE**

16 10.1. When any Party is entitled to receive any notice under this Consent Judgment,
17 the notice shall be sent by overnight courier service to the person and address set forth in
18 this Paragraph. Any Party may modify the person and address to whom the notice is to be
19 sent by sending the other Party notice by certified mail, return receipt requested. Said
20 change shall take effect for any notice mailed at least five days after the date the return
21 receipt is signed by the Party receiving the change.

22 10.2. Notices shall be sent to:

23 For the People/the Attorney General:

24 Laura J. Zuckerman
25 Timothy E. Sullivan
26 Deputy Attorneys General
27 1515 Clay Street, 20th Floor
28 Oakland, CA 94612

///

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1 For Frito-Lay, Inc.:

2 Attn: General Counsel
3 Frito-Lay, Inc.
4 7701 Legacy Drive
5 Plano, TX 75024-4099

with a copy to:

Trenton H. Norris
Arnold & Porter LLP
275 Battery Street, Ste. 2700
San Francisco, CA 94111

6 **11. COURT APPROVAL**

7 11.1. This Consent Judgment shall be submitted to the Court for entry by noticed
8 motion. If this Consent Judgment is not approved by the Court, it shall be of no force or
9 effect and may not be used by the Attorney General or Settling Defendant for any purpose.

10 **12. ENTIRE AGREEMENT**

11 12.1. This Consent Judgment contains the sole and entire agreement and
12 understanding of the Parties with respect to the entire subject matter hereof, and any and all
13 prior discussions, negotiations, commitments and understandings related hereto. No
14 representations, oral or otherwise, express or implied, other than those contained herein
15 have been made by any Party hereto. No other agreements not specifically referred to
16 herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

17 **IT IS SO ORDERED, ADJUDGED, AND DECREED:**

18 Dated: *April 28, 2010*

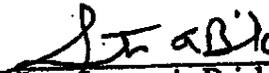
19 
20 _____
21 Hon. Steven A. Brick
22 Judge of the Superior Court
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Exhibit A

COVERED PRODUCTS

CORN/TORTILLA CHIPS

GROUP A. Fritos, Doritos, Tostitos, Santitas (all flavors, excluding Baked)

PRETZELS

GROUP B. Rold Gold (all flavors)

POPCORN

GROUP C. Cracker Jack

GROUP D. SmartFood, Chester's (all flavors)

PUFF EXTRUDED CORN

GROUP E. Cheetos, Chester's Puffcorn (all flavors, excluding Baked)

GROUP F. Chester's Fries

ALL OTHER NON-POTATO

GROUP G. Flat Earth, Sabritones, Munchies

GROUP H. Sunchips, Stacy's Soy, Funyuns, Stacy's Pita, Stacy's Bagel, Baken-Ets, Maui Style Shrimp Chips

BAKED

GROUP I. All of the above products sold under the subbrand "Baked":
Baked Doritos, Baked Tostitos, Baked Cheetos

Exhibit B

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

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

Frito-Lay, 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, Frito-Lay, 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, Frito-Lay, 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 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).

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 Frito-Lay, 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], Frito-Lay, Inc. sent you a letter enclosing sign warnings for posting in your store(s) in California pursuant to a consent judgment entered into between Frito-Lay, 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).

As stated in our prior letter, Frito-Lay, 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 acknowledgement 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 Frito-Lay, 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