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ENDORSED
FILED
ALAMEDA COUNTY

SEP 19 2011

K. McCoy, Exec. Off./Clerk

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

25 Defendants.

CASE NO.: RG 09455286

ASSIGNED FOR ALL PURPOSES TO:

JUDGE: Hon. Steven A. Brick

DEPT: 17

~~PROPOSED~~ AMENDED CONSENT
JUDGMENT AS TO DEFENDANT FRITO-
LAY, INC.

Date: September 19, 2011

Time: 3:00 p.m.

Dept: 17

Judge: Honorable Steven A. Brick

Reservation No.: R-1210296

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 General
3 of the State of California (the “People” or the “Attorney General”), filed a complaint for civil
4 penalties and injunctive relief for violations of Proposition 65 and unlawful business practices in the
5 Superior Court for the County of Alameda. The People’s Complaint alleges that the Defendants
6 failed to provide clear and reasonable warnings that ingestion of the products identified in the
7 Complaint would result in exposure to acrylamide, a chemical known to the State of California to
8 cause cancer. The Complaint further alleges that under the Safe Drinking Water and Toxic
9 Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.*, also known as
10 “Proposition 65,” businesses must provide persons with a “clear and reasonable warning” before
11 exposing individuals to these chemicals, and that the Defendants failed to do so. The Complaint
12 also alleges that these acts constitute unlawful acts in violation of the Unfair Competition Law,
13 pursuant to Business and Professions Code sections 17200 *et seq.*

14 1.2. Frito-Lay, Inc. (“Settling Defendant”) is among the Defendants named in the
15 Complaint. Both the People and Settling Defendant shall be referred to as a “Party” to this Consent
16 Judgment, and collectively they shall be referred to herein as the “Parties” to this Consent Judgment.

17 1.3. Settling Defendant is a Delaware corporation that employs more than ten employees,
18 and has employed more than ten employees at some time relevant to the allegations of the
19 complaint, and that manufactures, distributes and/or sells products in the State of California and has
20 done so in the past.

21 1.4. The products covered by this Consent Judgment (hereinafter, “Covered Products”)
22 are those snack food products manufactured and sold by Settling Defendant or its Affiliates (as
23 defined in Paragraph 8.1 herein) that are identified in Exhibit A, including corn chips, corn puffs,
24 pork rinds, bagel chips, pita chips, pretzels, tortilla chips, multigrain chips, vegetable chips, and
25 popcorn, and excluding Potato Crisp Products and Potato Chip Products covered by the prior
26 Consent Judgment as to Defendant Frito-Lay, Inc. in *People v. Frito-Lay, Inc., et al.*, Case No. BC
27 338956, Los Angeles Superior Court (Aug. 1, 2008). After the Effective Date, should Settling
28 Defendant introduce for sale to consumers in California a snack food product not described in

1 Exhibit A, then Settling Defendant shall give notice of such to the Attorney General in the form of a
2 revised version of Exhibit A. Should the Attorney General object to such notice within 30 days
3 following receipt of such notice, then the Parties shall proceed in accordance with Paragraph 5.1;
4 otherwise, this Consent Judgment shall be deemed to be modified to include such product as a
5 Covered Product.

6 1.5. For purposes of this Consent Judgment only, the People and the Settling Defendant
7 stipulate that this Court has jurisdiction over the allegations of violations contained in the People's
8 Complaint and personal jurisdiction over Settling Defendant as to the acts alleged in the People's
9 Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to
10 enter this Consent Judgment as a full and final resolution of all claims which were or could have
11 been raised in the Complaint based on the facts alleged therein.

12 1.6. The People and Settling Defendant stipulate to the entry of this Consent Judgment as
13 a full and final settlement of all claims that were raised in the Complaint (except as specified in
14 Paragraph 8.1 herein), arising out of the facts or conduct alleged therein. Except as expressly set
15 forth herein, nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy,
16 or defense the Attorney General and Settling Defendant may have in any other or in future legal
17 proceedings unrelated to these proceedings. However, this paragraph shall not diminish or
18 otherwise affect the obligations, responsibilities, and duties of the Parties under this Consent
19 Judgment.

20 1.7. By stipulating to the entry of this Consent Judgment and agreeing to provide the
21 relief and remedies specified herein, Settling Defendant does not admit (a) that it has violated, or
22 threatened to violate Proposition 65 or Business and Professions Code sections 17200 *et seq.*, or any
23 other law or legal duty; or (b) that the chemical acrylamide in food poses any risk to human health.
24 The Parties recognize that acrylamide is naturally formed when certain foods, such as the snack
25 food products at issue in this case, are heated, and that levels of acrylamide formation are due to a
26 wide variety of factors in the raw material and that may vary from location to location. Settling
27 Defendant contends that the Target Level set in this Consent Judgment is based on specific factors
28

1 that affect acrylamide levels in the Covered Products manufactured in or near California, and that
2 the Target Level is not relevant in areas outside of California where these same factors vary.

3 1.8. The Effective Date of this Amended Consent Judgment shall be the date on which
4 the original Consent Judgment was entered as a judgment by the Superior Court, that is, April 28,
5 2010.

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

7 2.1. *Target Level and Target Date.* Settling Defendant shall reduce the level of
8 acrylamide in its Covered Products shipped for sale in California after September 30, 2011 (the
9 “Target Date”) to a level of 281 parts per billion, measured by the weighted arithmetic mean
10 pursuant to the protocol described in Paragraph 2.3 (the “Target Level”) or be subject to the
11 provisions of Paragraph 3. Settling Defendant shall continue its program of research, development,
12 and implementation of technologies and methods intended to reduce the presence of acrylamide in
13 the Covered Products shipped for sale in California. Settling Defendant shall endeavor in good
14 faith, using commercially and technologically reasonable efforts, to achieve the Target Level in the
15 Covered Products shipped for sale in California by the Target Date. In addition, for the purposes of
16 this Consent Judgment, Settling Defendant shall not be considered to have achieved the Target
17 Level if, as of the Target Date, the arithmetic mean of the acrylamide concentration in any Group of
18 Covered Products, as set forth in Exhibit A and as determined in accordance with the protocol
19 described in Paragraph 2.3, exceeds the Target Level by more than 25%.

20 2.1.1: Notwithstanding any other provision of this Consent Judgment, on or before
21 the Target Date, Settling Defendant shall submit to the Attorney General a report demonstrating that
22 it has achieved the Target Level, as defined in Section 2.1, without including the Covered Products
23 in Group C. If Settling Defendant achieves the Target Level (without including the Covered
24 Products in Group C) by September 30, 2011, then, notwithstanding any other provision of this
25 Consent Judgment, the Target Date shall be extended to December 31, 2011.

26 2.2. “Shipped for sale in California” means Covered Products that Settling Defendant
27 either directly ships into California for sale in California or that it sells to a distributor who Settling
28 Defendant knows will sell the Covered Products to consumers in California. Where a retailer or

1 distributor sells Covered Products both in California and other states, Settling Defendant shall take
2 commercially reasonable steps to ensure that, after the Target Level has been reached, the only
3 Covered Products that are sold in California are either (i) Covered Products included in the
4 weighted arithmetic mean for which the Target Level has been achieved; or (ii) Covered Products
5 for which Settling Defendant has complied with Paragraph 3.

6 2.3. *Testing.*

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

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

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

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

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

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

8 2.4. *Verification and Warnings*

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

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

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

28

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 possible
3 extension of the Target Date. Upon timely application to the Court prior to the passing of the
4 Target Date, and for good cause shown based on Settling Defendant's diligence and good faith
5 efforts as well as reported progress to date, this Consent Judgment shall be modified to extend the
6 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 Settling
9 Defendant shall license any patented technology used to meet the Target Level, whether existing or
10 in the future, to others for use in other food products, at a commercially reasonable price, and using
11 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 by the
14 applicable Target Date, Settling Defendant shall within 30 days and until such time as it achieves
15 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 of the
18 weighted arithmetic mean to achieve the Target Level for the Covered Products; or, at Settling
19 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 arithmetic
22 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 Product
24 pursuant to Paragraph 3.1(a) shall either (a) conform to the requirements for the "safe harbor"
25 warning methods set out in Cal. Code Regs., tit. 27, § 25601, and, at the Settling Defendant's option,
26 may also state that acrylamide is the chemical in question and/or the approximate level of
27 acrylamide in the product; or (b) provide substantially the same information as set forth for sign
28 warnings in Paragraph 3.3(b).

1 General and, following agreement, jointly apply to the Court for approval of a plan for
2 implementing warnings in such manner. Such plan shall be approved only upon a showing that the
3 warning provided in such manner will comply with the law and be at least as effective as the forms
4 of warnings otherwise required by this Consent Judgment.

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

16 3.4. *Option to Provide Warnings.*

17 (a) With respect to the Covered Products, Settling Defendant may opt to provide
18 warnings under Paragraph 3.1 and cease its acrylamide reduction efforts under Paragraph 2 if either
19 or both of the following conditions have been satisfied with respect to the Covered Products: (i)
20 acrylamide warnings covering one or more products manufactured and sold by other companies that
21 are of the same type as the Covered Products appear on packages of such products accounting for
22 20% of sales of all such products in California that are not produced by Settling Defendant, based
23 on IRI sales data; and/or (ii) non-package acrylamide warnings specifically mentioning one or more
24 such products appear at 500 or more store locations in California.

25 (b) If Settling Defendant believes either or both conditions has/have occurred with
26 respect to the Covered Products, it shall give notice of such to the Attorney General, together with
27 documentation evidencing such occurrence. Following such notice, Settling Defendant and the
28 Attorney General will promptly meet and confer regarding the situation, and following that meet

1 and confer period of no longer than 30 days, Settling Defendant, by giving further notice of at least
2 30 days to the Attorney General, which the Attorney General may extend, at his option, by up to 60
3 days, may elect to (i) cease acrylamide reduction efforts with respect to the Covered Products; (ii)
4 provide the warnings required by Paragraph 3.1 for the Covered Products; and (iii) within 30 days
5 make all remaining payments required by Paragraph 4 with respect to the Covered Products.

6 3.5. *Extra-Territorial Effect.* Nothing in this Consent Judgment requires that warnings be
7 given for any Covered Products sold outside the State of California.

8 3.6. *Cessation of Warnings.* If Settling Defendant has demonstrated by testing that it has
9 achieved the Target Level for any or all Covered Products after providing warnings for such
10 Covered Products under Paragraph 3, then Settling Defendant may cease providing warnings for
11 such Covered Products.

12 4. PAYMENTS

13 4.1. *Initial Civil Penalty.* Settling Defendant shall pay a civil penalty to the Attorney
14 General pursuant to Health & Safety Code section 25249.12 of \$375,000 no later than 30 days after
15 the Effective Date.

16 4.2. *Interim Civil Penalty.* As an incentive for early achievement in acrylamide reduction,
17 Settling Defendant shall pay an additional civil penalty to the Attorney General pursuant to Health
18 & Safety Code section 25249.12 of \$550,000 (“Interim Civil Penalty”) no later than six months
19 after the Effective Date, but if Settling Defendant has achieved the Target Level for one or more of
20 the Groups specified in Exhibit A before such Interim Civil Penalty is due, then a portion of the
21 Interim Civil Penalty will be waived in proportion to the percentage of total sales volume of the
22 Covered Products represented by the sales volume of the Group or Groups for which Settling
23 Defendant has achieved the Target Level (the Group’s “pro rata share”), so that if Settling
24 Defendant has achieved the Target Level (as defined in Paragraph 2.1) with respect to all Covered
25 Products before such payment is due, the entire Interim Civil Penalty shall be waived. Each
26 Group’s pro rata share of the Interim Civil Penalty is to be calculated by the following formula:
27 Multiply that Group’s fraction of the total sales volume (net of returns) for all Groups listed in
28 Exhibit A by \$550,000. Sales volume for each Group and for total sales volume for the Covered

1 Products shall be based upon the most current 52 week IRI InfoScan data (in dollars, net of returns)
2 for the Los Angeles, San Francisco/Oakland, San Diego and Sacramento metropolitan areas
3 available to Settling Defendant as of 30 days before the date the Interim Civil Penalty is due.

4 4.3. *Final Civil Penalties.* As a further incentive for early achievement in acrylamide
5 reduction, Settling Defendant shall pay an additional civil penalty ("Final Civil Penalty") to the
6 Attorney General pursuant to Health & Safety Code section 25249.12 of \$1,700,000 no later than
7 the Target Date (without considering any extensions provided under Paragraph 2.5), but if Settling
8 Defendant has achieved the Target Level before the Target Date (without considering any
9 extensions provided under Paragraph 2.5), such Final Civil Penalty shall be waived.

10 4.4. *Enforcement Fund Payment.* Within 30 days of the Effective Date, Settling
11 Defendant shall pay \$50,000 to be used by the Attorney General for the enforcement of Proposition
12 65. Funds paid pursuant to this paragraph shall be placed in an interest-bearing Special Deposit
13 Fund established by the Attorney General. These funds, including any interest, shall be used by the
14 Attorney General, until all funds are exhausted, for the costs and expenses associated with the
15 enforcement and implementation of Proposition 65, including investigations, enforcement actions,
16 other litigation or activities as determined by the Attorney General to be reasonably necessary to
17 carry out his duties and authority under Proposition 65. Such funding may be used for the costs of
18 the Attorney General's investigation, filing fees and other court costs, payment to expert witnesses
19 and technical consultants, purchase of equipment, travel, purchase of written materials, laboratory
20 testing, sample collection, or any other cost associated with the Attorney General's duties or
21 authority under Proposition 65. Funding placed in the Special Deposit Fund pursuant to this
22 paragraph, and any interest derived therefrom, shall solely and exclusively augment the budget of
23 the Attorney General's Office and in no manner shall supplant or cause any reduction of any portion
24 of the Attorney General's budget.

25 4.5. *Delivery.* Each payment required by this Consent Judgment shall be made through
26 the delivery of separate checks payable to "California Department of Justice," to the attention of
27 Laura J. Zuckerman, Deputy Attorney General, California Department of Justice, 1515 Clay Street,
28 20th Floor, Oakland, CA 94612, with a copy of the check and cover letter to be sent to Robert

1 Thomas, Legal Analyst, California Department of Justice, 1515 Clay Street, 20th Floor, Oakland,
2 CA 94612.

3 **5. MODIFICATION OF CONSENT JUDGMENT**

4 5.1. *Procedure for Modification.* Except as provided in Paragraph 1.4, this Consent
5 Judgment may be modified by written agreement of the Attorney General and Settling Defendant,
6 after noticed motion, and upon entry of a modified consent judgment by the Court thereon, or upon
7 motion of the Attorney General or Settling Defendant as provided herein or as otherwise provided
8 by law, and upon entry of a modified consent judgment by the Court. Before filing an application
9 with the Court for a modification to this Consent Judgment, Settling Defendant shall meet and
10 confer with the Attorney General to determine whether the Attorney General will consent to the
11 proposed modification. If a proposed modification is agreed upon, then Settling Defendant and the
12 Attorney General will present the modification to the Court by means of a stipulated modification to
13 the Consent Judgment. Otherwise, Settling Defendant shall bear the burden of establishing that the
14 modification is appropriate based on the occurrence of a condition set forth in this Consent
15 Judgment or as otherwise provided by law.

16 5.2. *Duty to Warn.* If the Attorney General agrees in a settlement or judicially entered
17 consent judgment that one or more products manufactured and sold by other companies that are of
18 the same type as the Covered Products do not require a warning for acrylamide under Proposition
19 65, or if a court of competent jurisdiction renders a final judgment, and the judgment becomes final,
20 that one or more products manufactured and sold by other companies that are of the same type as
21 the Covered Products do not require a warning for acrylamide under Proposition 65, then the duty to
22 warn under Paragraph 3 of this Consent Judgment and the duty to reduce acrylamide levels under
23 Paragraph 2 of this Consent Judgment shall be eliminated with respect to such portion (or all) of the
24 Covered Products as is appropriate, except that, in the event that such final judgment is not binding
25 on the Attorney General, the Court may determine whether (or the extent to which) Settling
26 Defendant's duties should be eliminated or modified considering other equitable and legal factors.

27 5.3. *Manner or Form of Warning.* If the Attorney General subsequently agrees in a
28 settlement or judicially entered consent judgment, or if a court of competent jurisdiction renders a

1 final judgment, and the judgment becomes final, that warnings under Proposition 65 (based on the
2 presence of acrylamide) for one or more products manufactured and sold by other companies that
3 are of the same type as the Covered Products may be provided in a manner or form different from
4 that set forth in this Consent Judgment, then the manner and form of warning set forth in this
5 Consent Judgment shall be modified to entitle Settling Defendant to provide warnings in such other
6 manner or form, except that, in the event that such final judgment is not binding on the Attorney
7 General, the Court may determine whether (or the extent to which) Settling Defendant's duties
8 should be eliminated or modified considering other equitable and legal factors.

9 5.4. *Change in Proposition 65.* If Proposition 65 or its implementing regulations
10 (including the "safe harbor no significant risk level" for acrylamide set forth at Cal. Code Regs., tit.
11 27, section 25705, subdivision (c)(2)) are changed from their terms as they exist on the date of entry
12 of this Consent Judgment to establish that warnings for acrylamide in some or all of the Covered
13 Products are not required, then this Consent Judgment will be modified to relieve Settling
14 Defendant of its obligations with respect to such portion of the Covered Products as is appropriate.
15 The Parties recognize that the Target Level is based on a compromise of a number of issues, and
16 that an increase in the "safe harbor no significant risk level" above the current 0.2 micrograms per
17 day would not necessarily entitle Settling Defendant to a modification of the terms of this Consent
18 Judgment.

19 5.5. *Federal Preemption.* If a court of competent jurisdiction or an agency of the federal
20 government, including, but not limited to the U.S. Food and Drug Administration, states through
21 any regulation or legally binding act that federal law has preemptive effect on any of the
22 requirements of this Consent Judgment, including, but not limited to precluding Settling Defendant
23 from providing any of the warnings set forth in this Consent Judgment or the manner in which such
24 warning are given, then this Consent Judgment will be modified to bring it into compliance with or
25 avoid conflict with federal law, but the modification shall not be granted unless this Court
26 concludes, in a final judgment or order, that such modification is necessary to bring this Consent
27 Judgment into compliance with or avoid conflict with federal law. Specifically, a determination
28 that the provision of some, but not all, forms of warning described in Paragraph 3 above is not

1 permitted shall not relieve Settling Defendant of the duty to provide one of the other warnings
2 described under this judgment for which such determination has not been made.

3 5.6. *Scientific Review.* If an agency of the federal government, including but not limited
4 to the U.S. Food-and Drug Administration, determines in an official communication, regulation, or
5 legally binding act, following a thorough review of the available scientific studies and opportunity
6 for public comment, a cancer potency estimate (Q*) for acrylamide that equates to a no significant
7 risk level of 1.0 meg/day or higher, Settling Defendant or its representative (including a coalition or
8 trade association) may petition the California Office of Environmental Health Hazard Assessment
9 (“OEHHA”) to revise the no significant risk level for acrylamide set forth at Cal. Code Regs., tit. 27,
10 section 25705, subdivision (c)(2), in light of such federal action. If the Target Date (including any
11 extensions under Paragraph 2.5) falls after the date of the federal agency determination noted above,
12 but before OEHHA has issued a final decision on the petition, then the Target Date will be extended
13 to such date as is 90 days after the date on which OEHHA issues a final decision on such petition.

14 **6. ENFORCEMENT**

15 6.1. The People may, by motion or application for an order to show cause before this
16 Court, enforce the terms and conditions contained in this Consent Judgment. In any such
17 proceeding, the People may seek whatever fines, costs, penalties, or remedies are provided by law
18 for failure to comply with the Consent Judgment and where said violations of this Consent
19 Judgment constitute subsequent violations of Proposition 65 or other laws independent of the
20 Consent Judgment and/or those alleged in the Complaint, the People are not limited to enforcement
21 of the Consent Judgment, but may seek in another action whatever fines, costs, penalties, or
22 remedies are provided for by law for failure to comply with Proposition 65 or other laws. In any
23 action brought by the People alleging subsequent violations of Proposition 65 or other laws, Settling
24 Defendant may assert any and all defenses that are available.

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

26 7.1. Each signatory to the Parties’ stipulation for entry of this Consent Judgment certifies
27 that he or she is fully authorized by the Party he or she represents to stipulate to this Consent
28

1 Judgment and to enter into and execute the stipulation on behalf of the Party represented and legally
2 to bind that Party.

3 **8. CLAIMS COVERED**

4 8.1. This Consent Judgment is a full, final, and binding resolution between the People
5 and Settling Defendant of any violation of Proposition 65, Business & Professions Code sections
6 17200 *et seq.*, or any other statutory or common law claims that have been or could have been
7 asserted in the Complaint against Settling Defendant for failure to provide clear and reasonable
8 warnings of exposure to acrylamide from the consumption of the Covered Products, or any other
9 claim based on the facts or conduct alleged in the Complaint as to the Covered Products, whether
10 based on actions committed by Settling Defendant or by any entity to whom it distributes or sells
11 Covered Products, or any entity that sells the Covered Products to consumers in the state of
12 California except for sales of Covered Products by retailers during any period in which such
13 retailers have not posted signs sent to them pursuant to Paragraph 3.3(d). With this one exception,
14 as to Covered Products, compliance with the terms of this Consent Judgment resolves any issue
15 now, in the past, and in the future concerning compliance by Settling Defendant, its parents,
16 shareholders, divisions, subdivisions, subsidiaries, sister companies, affiliates, franchisees,
17 cooperative members, and licensees; their distributors, wholesalers, and retailers who sell Covered
18 Products; and the predecessors, successors, and assigns of any of them (collectively, "Affiliates"),
19 with the requirements of Proposition 65 as to acrylamide in the Covered Products.

20 **9. RETENTION OF JURISDICTION**

21 9.1. This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

22 **10. PROVISION OF NOTICE**

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

28 10.2. Notices shall be sent to:

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 Frito-Lay, Inc.:

8 Attn: General Counsel
9 Frito-Lay, Inc.
10 7701 Legacy Drive
11 Plano, TX 75024-4099

with a copy to:

Trenton H. Norris
1 Embarcadero Center, Floor 22

San Francisco, CA 94111

12 **11. COURT APPROVAL**

13 11.1. This Amended Consent Judgment shall be submitted to the Court pursuant to the
14 Court's September 15, 2011 tentative order granting the [Proposed] Order for Modification to Frito-
15 Lay Consent Judgment.

16 **12. ENTIRE AGREEMENT**

17 12.1. This Consent Judgment contains the sole and entire agreement and understanding of
18 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
19 negotiations, commitments and understandings related hereto. No representations, oral or otherwise,
20 express or implied, other than those contained herein have been made by any Party hereto. No other
21 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind
22 any of the Parties.

23 IT IS SO ORDERED, ADJUDGED, AND DECREED:

24 Dated:

25 SEP 19 2011

26 **STEVEN A. BRICK**

27 Hon. Steven A. Brick
28 Judge of the Superior Court

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