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ENDORSED
FILED
ALAMEDA COUNTY

JUN 13 2018
CLERK OF THE SUPERIOR COURT
By PAM WILLIAMS
Deputy

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

CENTER FOR ENVIRONMENTAL HEALTH,
Plaintiff,
v.
LAMB WESTON HOLDINGS, INC., *et al.*,
Defendants.

Case No. RG 16-838610
~~PROPOSED~~ CONSENT JUDGMENT
AS TO J.R. SIMPLOT COMPANY

1. DEFINITIONS

- 1.1 The "Complaint" means the operative First Amended Complaint in the above-captioned matter.
- 1.2 "Compliance Date" shall mean the date that is six months after the Effective Date.
- 1.3 "Covered Products" shall mean Settling Defendant's packaged Dehydrated Hash Browns, Diced Hash Browns, French Fry Products, Hash Brown Patties, Potato Puffs, and Shredded Hash Browns (as defined below) that are ultimately sold to consumers. Non-exclusive

1 examples of Covered Products are identified on Exhibit A. Covered Products comprise the
2 following categories (“Product Types”):

3 1.3.1 “Dehydrated Hash Browns” shall mean hash brown potatoes sold in a
4 dehydrated form.

5 1.3.2 “Diced Hash Browns” shall mean frozen hash brown potatoes sold in a
6 diced or cubed shape (also known as Southern Style Hash Browns).

7 1.3.3 “French Fry Products” shall mean frozen french-fried potatoes.

8 1.3.4 “Hash Brown Patties” shall mean variously shaped pre-formed frozen
9 hash brown potato products.

10 1.3.5 “Potato Puffs” shall mean pre-formed frozen potato tots and tater puffs.

11 1.3.6 “Shredded Hash Browns” shall mean frozen hash brown potatoes sold in
12 a shredded form (but excluding Hash Brown Patties and Potato Puffs).

13 1.4 “Effective Date” means the date on which notice of entry of this Consent
14 Judgment is by the Court is served upon Settling Defendant.

15 **2. INTRODUCTION**

16 2.1 The Parties to this Consent Judgment are the Center For Environmental Health
17 (“CEH”), a California non-profit corporation, and J. R. Simplot Company (“Settling Defendant”).
18 CEH and Settling Defendant (the “Parties”) enter into this Consent Judgment to settle certain
19 claims asserted by CEH against Settling Defendant as set forth in Complaint.

20 2.2 On July 27, 2016, August 26, 2016, and March 9, 2018, CEH issued 60-day
21 Notices of Violation of Proposition 65 to the California Attorney General, to the District
22 Attorneys of every county in California, to the City Attorneys of every California city with a
23 population greater than 750,000, and to Settling Defendant, alleging that Settling Defendant
24 violated Proposition 65 by exposing persons to acrylamide in excess of the warning threshold
25 when using Covered Products under the provided directions for use, without first providing a
26 clear and reasonable Proposition 65 warning.

27 2.3 Settling Defendant is a corporation or other business entity that employs ten or
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1 more people and manufactures, distributes, sells, or offers for sale Covered Products that are sold
2 in the State of California or has done so in the past.

3 2.4 On April 10, 2017, CEH filed the Complaint, naming Settling Defendant as a
4 defendant in the action. Upon entry of this Consent Judgment, to the extent necessary to
5 effectuate this settlement, the operative Complaint in the action is deemed amended such that the
6 term “Products” as to Settling Defendant only means Covered Products.

7 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
8 has jurisdiction over the allegations of violations contained in the Complaint and personal
9 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper
10 in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent
11 Judgment as a full and final resolution of all claims which were or could have been raised in the
12 Complaint based on the facts alleged therein with respect to Covered Products manufactured,
13 distributed, and/or sold by Settling Defendant.

14 2.6 Nothing in this Consent Judgment is or shall be construed as an admission by the
15 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with
16 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
17 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
18 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
19 other pending or future legal proceedings. This Consent Judgment is the product of negotiation
20 and compromise and is accepted by the Parties solely for purposes of settling, compromising, and
21 resolving issues disputed in this Action.

22 **3. INJUNCTIVE RELIEF**

23 Beginning on the Compliance Date, Settling Defendant shall be permanently enjoined
24 from manufacturing or purchasing any Covered Products that are sold or offered for sale in
25 California which do not meet the Reformulation Levels in Section 3.1 below, unless they meet
26 the warning requirements of Section 3.3 below.

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1 3.1 **Reformulation Levels.**

2 3.1.1 **Average Levels.** The average acrylamide concentration of Covered
3 Products, as used per cooking instructions, shall not exceed:

4 3.1.1.1 280 ppb by weight on average of French Fry Products.

5 3.1.1.2 350 parts per billion (“ppb”) by weight on average for all other
6 Covered Products.

7 The Average Level is determined by randomly selecting and testing at least one sample each
8 from at least five different lots of a particular Product Type (or the maximum number of lots
9 available for testing if fewer than 5). The mean and standard deviation shall be calculated using
10 the sampling data. Any data points that are more than three standard deviations outside the mean
11 shall be discarded once, and the mean and standard deviation recalculated using the remaining
12 data points. The mean determined in accordance with this procedure shall be deemed the
13 “Average Level.” Further testing conditions are specified in Exhibit B.

14 3.1.2 **Unit Levels.** The acrylamide concentration of any individual unit of
15 Covered Product, as used per cooking instructions, shall not exceed:

16 3.1.2.1 400 ppb by weight for French Fry Products.

17 3.1.2.2 500 ppb by weight for all other Covered Products.

18 The Unit Level shall be determined based on a representative, composite sample taken from the
19 individual unit being tested and as further specified in Exhibit B.

20 3.2 **Compliance Testing.** Compliance with the Reformulation Levels shall be
21 determined by use of a test performed by an accredited laboratory using either GC/MS (Gas
22 Chromatograph/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry) or
23 any other testing method agreed upon by the Parties. Sampling and testing shall be performed in
24 accordance with the protocol attached hereto as Exhibit B, or any other protocol later agreed to
25 by Settling Defendant and CEH. Compliance with the Reformulation Levels shall be determined
26 as specified in Exhibit B.

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1 3.3 **Warnings.**

2 3.3.1 A Covered Product purchased or manufactured by Settling Defendant
3 after the Compliance Date may, as an alternative to meeting the Reformulation Levels set forth in
4 Section 3.1, be sold or offered for sale in California with a warning that complies with the
5 provisions of this Section 3.3. A warning under this Agreement shall state:

6 **WARNING:** Consuming this product can expose you to [chemicals including]
7 acrylamide which is [are] known to the State of California to cause cancer, birth
8 defects, or other reproductive harm For more information go to
9 www.p65warnings.ca.gov/food.

10 3.3.2 The warning shall be securely affixed to or printed on the container or
11 label of each Covered Product that does not meet the requirements of Section 3.1, or affixed to
12 the shelf where the Covered Product is displayed for sale. If the warning is displayed on the
13 Covered Product’s label, it must be enclosed in a text box. If the warning is provided on a shelf,
14 the warning must specify which Products the warning applies to.

15 3.3.3 The warning shall be at least the same size as the largest of any other
16 health or safety warnings also appearing on the label or container of the Covered Product. The
17 word “WARNING” shall be in all capital letters and in bold print. No statements contradicting or
18 conflicting with the warning shall accompany the warning.

19 3.3.4 The warning must be displayed with such conspicuousness, as compared
20 with other words, statements, and design of the label or container (as applicable) to render the
21 warning likely to be read and understood by an ordinary individual under customary conditions of
22 purchase or use of the Covered Product.

23 **4. ENFORCEMENT**

24 4.1 **General Enforcement Provisions.** CEH may, by motion or application for an
25 order to show cause before this Court, enforce the terms and conditions contained in this Consent
26 Judgment. Any action to enforce alleged violations of Section 3.1 by Settling Defendant shall be
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1 brought exclusively pursuant to this Section 4, and be subject to the meet and confer requirement
2 of Section 4.2.5, if applicable.

3 4.2 **Enforcement of Reformulation Commitment.**

4 4.2.1 Covered Product Identification. Within 30 days after the Compliance
5 Date, Settling Defendant shall notify CEH of a means sufficient to allow CEH to identify
6 Covered Products manufactured or purchased by Settling Defendant on or after that date, for
7 example, a unique brand name or characteristic system of product numbering or labeling. Upon
8 written request by CEH, but no more than once in any calendar year, Settling Defendant shall,
9 within 30 days of receiving a request from CEH, update the information provided to CEH
10 pursuant to this Section 4.2.1 by notifying CEH of a means sufficient to allow CEH to identify
11 Covered Products currently supplied or offered for sale by that Settling Defendant. If CEH is
12 unable to determine whether a particular product is a Covered Product as to Settling Defendant
13 based on the information provided to CEH pursuant to this Section 4.2.1, Settling Defendant shall
14 cooperate in good faith with CEH in determining whether the product at issue is a Covered
15 Product supplied or offered for sale by Settling Defendant. All information provided to CEH
16 pursuant to this Section 4.2.1 may be designated by Settling Defendant as competitively sensitive
17 confidential business information, and if so designated shall not be disclosed to any person
18 without the written permission of Settling Defendant. Any motions or pleadings or any other
19 court filings that may reveal information designated as competitively sensitive confidential
20 business information pursuant to this Section shall be submitted in accordance with California
21 Rules of Court 8.46 and 2.550, et seq. The provisions of this Section 4.2.1 shall sunset seven
22 years after the Compliance Date.

23 4.2.2 Notice of Violation. In the event that CEH purchases a Covered Product
24 in California that was manufactured, distributed, or sold by Settling Defendant and that has a
25 best-by or sell-by (or equivalent) date or other code that reflects that the Covered Product was
26 manufactured on or after the Compliance Date and for which CEH has laboratory test results
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1 showing that the Covered Product has an acrylamide level exceeding the Unit Level, then CEH
2 may issue a Notice of Violation pursuant to this Section.

3 4.2.3 Service of Notice of Violation and Supporting Documentation.

4 4.2.3.1 The Notice of Violation shall be sent to the person(s) identified in
5 Section 8.2 to receive notices for Settling Defendant, and must be served within sixty (60) days of
6 the later of the date the Covered Product at issue was purchased or otherwise acquired by CEH or
7 the date that CEH can reasonably determine that the Covered Product at issue was manufactured,
8 distributed, or sold by Settling Defendant, provided, however, that CEH may have up to an
9 additional sixty (60) days to send the Notice of Violation if, notwithstanding CEH's good faith
10 efforts, the test data required by Section 4.2.2.2 below cannot be obtained by CEH from its
11 laboratory before expiration of the initial sixty (60) day period.

12 4.2.3.2 The Notice of Violation shall, at a minimum, set forth: (a) the date
13 the Covered Product was purchased; (b) a description of the Covered Product giving rise to the
14 alleged violation, including the name and address of the retail entity from which the sample was
15 obtained and if available information that identifies the product lot; and (c) all test data obtained
16 by CEH regarding the Covered Product and supporting documentation sufficient for validation of
17 the test results, including any laboratory reports, quality assurance reports, and quality control
18 reports associated with testing of the Covered Product.

19 4.2.4 Notice of Election of Response. No more than sixty (60) days after
20 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to
21 CEH whether or not it elects to contest the allegations contained in a Notice of Violation ("Notice
22 of Election"). Failure to provide a Notice of Election within sixty (60) days of effectuation of
23 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.

24 4.2.5 If a Notice of Violation is contested, the Notice of Election shall include
25 all then-available non-privileged documentary evidence regarding the alleged violation, including
26 all available test data. If Settling Defendant or CEH later acquires additional test or other non-
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1 privileged data regarding the alleged violation, it shall notify the other party and promptly
2 provide all such non-privileged data or information to the party.

3 4.2.6 Meet and Confer. If a Notice of Violation is contested, CEH and Settling
4 Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of
5 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw
6 the original Notice of Election contesting the violation and serve a new Notice of Election to not
7 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay
8 \$2,500 in addition to any payment required under this Consent Judgment. At any time, CEH may
9 withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the result shall be
10 as if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of
11 Violation results within thirty (30) days of a Notice of Election to contest, CEH may file an
12 enforcement motion or application pursuant to Section 4.1. The parties may extend this thirty
13 (30) day time period by stipulation. In any enforcement proceeding, CEH may seek whatever
14 fines, costs, penalties, attorneys' fees, or other remedies are provided by law for failure to comply
15 with the Consent Judgment.

16 4.2.7 Non-Contested Notices. If Settling Defendant elects to not contest the
17 allegations in a Notice of Violation, it shall undertake corrective action(s) and make payments, if
18 any, as set forth below.

19 4.2.7.1 Settling Defendant shall include in its Notice of Election a detailed
20 description with supporting documentation of the corrective action(s) that it has undertaken or
21 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,
22 provide reasonable assurance that all Covered Products having the same lot number or lot code as
23 that of the Covered Product identified in CEH's Notice of Violation (the "Noticed Covered
24 Products") will not be thereafter be sold or offered for sale in California. Settling Defendant shall
25 make available to CEH for inspection and copying records of non-privileged correspondence
26 sufficient to show market withdrawal of the Noticed Covered Products to the extent it has such
27 documents on file. If the Notice of Violation is based on a violation of the Unit Level with
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1 respect to a single Covered Product, Settling Defendant will be excused from the market
2 withdrawal obligation if Settling Defendant produces test results or other evidence showing that
3 the Noticed Covered Products comply with the Average Level specified in Section 3.1.1.
4 However, to avail itself of this provision, Settling Defendant must provide CEH with all non-
5 privileged acrylamide test data in its possession, custody, or control pertaining to the type of
6 Covered Product at issue in the Notice of Violation that was performed within the year prior to
7 Settling Defendant producing test results to CEH under this Section 4.2.7.1. If there is a dispute
8 over whether Settling Defendant is excused from the corrective action, Settling Defendant and
9 CEH shall meet and confer before seeking any remedy in court.

10 4.2.7.2 If the Notice of Violation is the first, second, third, or fourth Notice
11 of Violation received by Settling Defendant under Section 4.2.1 that was not successfully
12 contested or withdrawn, then Settling Defendant shall pay \$15,000 for each Notice of Violation.
13 This shall be the sole and exclusive remedy for such violation. If Settling Defendant has received
14 more than four (4) Notices of Violation under Section 4.2.2 that were not successfully contested
15 or withdrawn, then Settling Defendant shall pay \$25,000 for each subsequent Notice of Violation.
16 If Settling Defendant produces with its Notice of Election test data for the specific SKU, or
17 comparative like items, that reasonably demonstrates predicted acrylamide levels below the Unit
18 Level, then any payment under this Section shall be reduced by 100 percent (100%) for the first
19 Notice of Violation, by seventy-five percent (75%) for the second Notice of Violation, and by
20 fifty percent (50%) for any subsequent Notice of Violation. If Settling Defendant is excused
21 from the market withdrawal obligation pursuant to Section 4.2.7.1, then Settling Defendant shall
22 pay \$2,500 for that Notice of Violation. In no case shall Settling Defendant be obligated to pay
23 more than \$100,000 for uncontested Notices of Violation in any calendar year irrespective of the
24 total number of Notices of Violation issued.

25 4.2.7.3 In no case shall CEH issue more than one Notice of Violation per
26 manufacturing lot of a type of Covered Product. CEH shall be limited to issuing no more than
27 two total Notices of Violation to Settling Defendant in the first year after the Compliance Date.

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1 4.2.8 Payments. Any payments under Section 4.2 shall be made by check
2 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a
3 Notice of Election triggering a payment and which shall be used as reimbursement for costs for
4 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse
5 attorneys’ fees and costs incurred in connection with these activities, and shall be the extent of all
6 monetary remedies available to CEH under this Consent Judgment for a non-contested Notice of
7 Violation.

8 4.3 **Repeat Violations.** If Settling Defendant has received five (5) or more Notices of
9 Violation concerning the same type of Covered Product that were not successfully contested or
10 withdrawn, as to the fifth (5th) and subsequent Notices of Violation, at CEH’s option, CEH may
11 seek from Settling Defendant whatever fines, costs, penalties, attorneys’ fees, or other remedies
12 that are provided by law for failure to comply with the Consent Judgment. Prior to seeking such
13 relief, CEH shall meet and confer with Settling Defendant for at least thirty (30) days to
14 determine if Settling Defendant and CEH can agree on measures that Settling Defendant can
15 undertake to prevent future violations.

16 **5. PAYMENTS**

17 5.1 **Payments by Settling Defendant.** Within fifteen (15) calendar days of the
18 Effective Date, Settling Defendant shall pay the amount specified on Exhibit A.

19 5.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall
20 be paid in five (5) separate checks in the amounts specified in Exhibit A and delivered as set forth
21 below. Any failure by Settling Defendant to comply with the payment terms herein shall be
22 subject to a stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each
23 day the full payment is not received after the applicable payment due date set forth in Section 5.1.
24 The late fees required under this Section shall be recoverable, together with reasonable attorneys’
25 fees, in an enforcement proceeding brought pursuant to Section 4.1 of this Consent Judgment.
26 The funds paid by Settling Defendant shall be allocated as set forth below between the following
27 categories and made payable as follows:

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1 5.2.1 A civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil
2 penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12 (25%
3 to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment
4 (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty payment shall be made
5 payable to OEHHA and associated with taxpayer identification number 68-0284486. This
6 payment shall be delivered as follows:

7 For United States Postal Service Delivery:
8 Attn: Mike Gyurics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
 P.O. Box 4010, MS #19B
 Sacramento, CA 95812-4010

11 For Non-United States Postal Service Delivery:
12 Attn: Mike Gyurics
13 Fiscal Operations Branch Chief
14 Office of Environmental Health Hazard Assessment
 1001 I Street, MS #19B
 Sacramento, CA 95814

15 The CEH portion of the civil penalty payment shall be made payable to the Center
16 For Environmental Health and associated with taxpayer identification number 94-3251981. This
17 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
18 94117.

19 5.2.2 An Additional Settlement Payment (“ASP”) to CEH pursuant to Health &
20 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH intends to
21 restrict use of the ASPs received from the Consent Judgment before the Court to the following
22 purposes: the funds will be placed in CEH’s Toxics in Food Fund and used to support CEH
23 programs and activities that seek to educate the public about acrylamide and other toxic
24 chemicals in food, to work with the food industry and agriculture interests to reduce exposure to
25 acrylamide and other toxic chemicals in food, and to thereby reduce the public health impacts and
26 risks of exposure to acrylamide and other toxic chemicals in food sold in California. CEH shall
27 obtain and maintain adequate records to document that ASPs are spent on these activities and
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1 CEH agrees to provide such documentation to the Attorney General within thirty (30) days of any
2 request from the Attorney General. The payment pursuant to this Section shall be made payable
3 to the Center For Environmental Health, associated with taxpayer identification number 94-
4 3251981 and delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
5 94117.

6 5.2.3 A reimbursement of a portion of CEH's reasonable attorneys' fees and
7 costs. The Lexington Law Group portion of the attorneys' fees and cost reimbursement shall be
8 made payable to the Lexington Law Group and associated with taxpayer identification number
9 94-3317175. The CEH portion of the attorneys' fees and cost reimbursement shall be made
10 payable to the Center For Environmental Health and associated with taxpayer identification
11 number 94-3251981. These payments shall be delivered to Lexington Law Group, 503
12 Divisadero Street, San Francisco, CA 94117.

13 **6. MODIFICATION AND DISPUTE RESOLUTION**

14 6.1 **Modification.** This Consent Judgment may be modified from time to time by
15 express written agreement of the Parties, with the approval of the Court and prior notice to the
16 Attorney General's Office, or by an order of this Court upon motion and prior notice to the
17 Attorney General's Office and in accordance with law.

18 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
19 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to
20 modify the Consent Judgment.

21 **7. CLAIMS COVERED AND RELEASE**

22 7.1 Provided that Settling Defendant complies in full with its obligations under
23 Section 5 hereof, this Consent Judgment is a full, final, and binding resolution between CEH on
24 behalf of itself and the public interest and Settling Defendant and Settling Defendant's parents,
25 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
26 agents, shareholders, successors, assigns, and attorneys ("Defendant Releasees"), and all entities
27 to which Settling Defendant directly or indirectly distributes or sells Covered Products, including
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1 but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and
2 licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on
3 failure to warn about alleged exposure to acrylamide contained in Covered Products that were
4 manufactured prior to the Compliance Date.

5 7.2 Provided that Settling Defendant complies in full with its obligations under
6 Section 5 hereof, CEH, for itself, its agents, successors, and assigns, releases, waives, and forever
7 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream
8 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
9 common law claims that have been or could have been asserted by CEH individually or in the
10 public interest regarding the failure to warn about exposure to acrylamide arising in connection
11 with Covered Products manufactured by Settling Defendant prior to the Compliance Date.

12 Provided that Settling Defendant complies in full with its obligations under Section 5
13 hereof, CEH, in its individual capacity only and not in its representative capacity, also provides a
14 release to Settling Defendant, Defendant Releasee, and Downstream Defendant Releasee which
15 shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of
16 action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and
17 demands of CEH of any nature, character, or kind, whether known or unknown, suspected or
18 unsuspected, arising out of alleged or actual exposures to acrylamide in the Covered Products
19 sold or distributed for sale by Settling Defendant before the Compliance Date.

20 7.3 Provided that Settling Defendant complies in full with its obligations under
21 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant and
22 Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant, its
23 Defendant Releasees, and its Downstream Defendant Releasees with respect to any alleged
24 failure to warn about acrylamide in Covered Products manufactured, distributed, or sold by
25 Settling Defendant after the Compliance Date.

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1 **8. PROVISION OF NOTICE**

2 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
3 notice shall be sent by first class and electronic mail to:

4 Howard Hirsch
5 Lexington Law Group
6 503 Divisadero Street
7 San Francisco, CA 94117
8 hhirsch@lexlawgroup.com

9 8.2 When Settling Defendant is entitled to receive any notice under this Consent
10 Judgment, the notice shall be sent by first class and electronic mail to the person(s) identified in
11 Exhibit A.

12 8.3 Any Party may modify the person and/or address to whom the notice is to be sent
13 by sending the other Parties notice by first class and electronic mail.

14 **9. COURT APPROVAL**

15 9.1 This Consent Judgment shall become effective upon the date signed by CEH and
16 Settling Defendant, whichever is later, provided, however, that CEH shall prepare and file a
17 Motion for Approval of this Consent Judgment and Settling Defendant shall support approval of
18 such Motion.

19 This Consent Judgment is not effective until it is approved and entered by the Court. The
20 Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
21 noticed motion is required for judicial approval of this Consent Judgment, which motion CEH
22 shall draft and file and Settling Defendant shall support, appearing at the hearing if so requested.
23 If any third party objection to the motion for approval is filed, CEH and Settling Defendant agree
24 to work together to file a response and appear at any hearing.

25 If the Court does not approve the Consent Judgment, the Parties agree to meet and confer
26 as to whether to modify the language or appeal the ruling. If the Parties do not jointly agree on a
27 course of action to take, then the case shall proceed in its normal course on the Court's trial
28 calendar. If the Court's approval is ultimately overturned by an appellate court, the Parties shall
meet and confer as to whether to modify the terms of this Consent Judgment. If the parties do not

1 jointly agree on a course of action to take then the case shall proceed in its normal course on the
2 Court's trial calendar. In the event that this Consent Judgment is entered by the Court and
3 subsequently overturned by any appellate court, then any monies that have been provided to CEH
4 or its counsel under this Consent Judgment shall be refunded within 15 days of the appellate
5 decision becoming final and the Parties shall reasonably cooperate to obtain a timely refund of
6 monies paid to OEHHA under this Consent Judgment.

7 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
8 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
9 purpose other than to determine whether there was a material breach of Section 9.1.

10 **10. GOVERNING LAW AND CONSTRUCTION**

11 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
12 California.

13 **11. ATTORNEYS' FEES**

14 11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
15 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs..

16 11.2 Nothing in this Section 11 shall preclude a party from seeking an award of
17 sanctions pursuant to law.

18 **12. ENTIRE AGREEMENT**

19 12.1 This Consent Judgment contains the sole and entire agreement and understanding
20 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
21 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
22 and therein. There are no warranties, representations, or other agreements between the Parties
23 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
24 other than those specifically referred to in this Consent Judgment have been made by any Party
25 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
26 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
27 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
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1 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
2 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
3 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
4 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
5 whether or not similar, nor shall such waiver constitute a continuing waiver.

6 **13. RETENTION OF JURISDICTION**

7 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
8 Consent Judgment.

9 **14. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

10 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
11 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
12 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

13 **15. NO EFFECT ON OTHER SETTLEMENTS**

14 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
15 against any entity other than Settling Defendant on terms that are different than those contained
16 in this Consent Judgment. Settling Defendant may move to modify this Consent Judgment
17 pursuant to Section 6 to substitute higher Reformulation Levels that CEH agrees to in a future
18 consent judgment applicable to products substantially similar to the Covered Products, and CEH
19 agrees not to oppose any such motion except for good cause shown.

20 **16. COMPLIANCE WITH REPORTING REQUIREMENTS**

21 16.1 CEH agrees to comply with the reporting form requirements referenced in Health
22 and Safety Code section 25249.7(f).

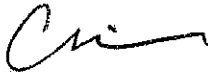

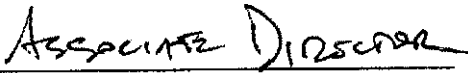
23 **17. EXECUTION IN COUNTERPARTS**

24 17.1 The stipulations to this Consent Judgment may be executed in counterparts and by
25 means of facsimile or portable document format (pdf), which taken together shall be deemed to
26 constitute one document.

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IT IS SO STIPULATED:

Dated: <u>16 MAR</u> , 2018	CENTER FOR ENVIRONMENTAL HEALTH  Signature  Printed Name  Title
Dated: _____, 2018	J.R. SIMPLOT COMPANY Signature Printed Name Title

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


Dated: 6/13/18

IOANA PETROU

Judge of the Superior Court

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IT IS SO STIPULATED:

Dated: _____, 2018	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <hr/> Signature
Dated: <u>March 22</u> , 2018	<p>J.R. SIMPLOT COMPANY</p>  <hr/> Signature
	<hr/> Printed Name <p><u>Mark McKellar</u></p> <hr/> Title <p><u>President, NAFG</u></p>

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

Dated: _____ Judge of the Superior Court

EXHIBIT A

Non-exclusive examples of Covered Products:

COVERED RETAIL FRENCH FRY PRODUCTS MANUFACTURED BY SETTLING DEFENDANT

Lynden Farms® crinkle cut fries
Lynden Farms® shoestring fries
Lynden Farms® straight cut fries
Lynden Farms® steak fries
TJ Farms® Select – shoestring fries
TJ Farms® Select – crinkle cut fries
TJ Farms® Select – straight cut fries
TJ Farms® Select – steak cut fries
TJ Farms® Select – seasoned potato wedges
Trader Joe's® garlic fries
Trader Joe's® handsome cut fries

ALL OTHER COVERED RETAIL PRODUCTS MANUFACTURED BY SETTLING DEFENDANT

Lynden Farms® hash brown patties
Lynden Farms® - Form Tater Bucks®
Lynden Farms® - Form Tater Gems®
Lynden Farms® - Tiny Triangles
Lynden Farms® seasoned mini hash browns
Lynden Farms® hash brown cubes
Lynden Farms® hash brown shred
Lynden Farms® Cubes O'Brien
Simplot® hash brown patties
TJ Farms® Select – hash brown patties
TJ Farms® Select – southern style hash brown potatoes
TJ Farms® Select – shredded hash browns
TJ Farms® Select – Potatoes O'Brien
TJ Farms® Select – Tater Crowns
TJ Farms® Select – Tater Rounds
TJ Farms® Select – Tater Sticks
Trader Joe's® hash brown patties
Trader Joe's® potato tots
Trader Joe's® IQF HB Shred

Settling Defendant's Settlement Payment and Allocation:

Total Settlement Payment	\$372,500
Civil Penalty OEHHA Portion	\$38,100
Civil Penalty CEH Portion	\$12,700
Additional Settlement Payment	\$38,100
Attorneys' Fees and Costs (LLG)	\$239,065
Attorneys' Fees and Costs (CEH)	\$44,535

Person(s) to Receive Notices for Settling Defendant Pursuant to Section 8:

Vanessa C. Adriance
Arnold & Porter
777 South Figueroa Street, 44th Floor
Los Angeles, CA 90017-5844
Vanessa.Adriance@arnoldporter.com

EXHIBIT B
Sampling and Testing Methodology – Oven Baked Products

Scope: Frozen potato products for which conventional oven is the recommended preparation method. **Note: where more than one preparation method is included in addition to the conventional oven preparation method, the product should be tested using the conventional oven method.**

- I. Sample
 - a. A single retail package, as prepared under Section IV below.

- II. Sampling Frequency and Mathematical Averaging for “Average Level” Analysis
 - a. Collect and prepare, per the instructions below, at least 1 sample each from 5 or more different lots of a particular SKU of Covered Product (or the maximum number of lots available for testing if fewer than 5). A product lot is defined as a 24-hour production period.
 - b. As provided in Section 3.1.1.2 of the consent judgment, average the results of all samples to determine the “Average Level” for the specific product identified in the Notice of Violation. The mean and standard deviation shall be calculated using the sampling data. Any data points that are more than three standard deviations outside the mean shall be discarded once, and the mean and standard deviation recalculated using the remaining data points. The mean determined in accordance with this procedure shall be deemed the “Average Level.”

- III. Equipment Preparation

A conventional household 30 inch electric standard size oven should be used to prepare all samples for acrylamide analysis.

 - a. Oven Calibration
 - i. The oven is to be preheated to the baking temperature specified in the cooking instruction for the product, and then calibrated through three heating cycles. The midpoint of the heating cycle should be the recommended preparation temperature. The oven’s heating cycles range must not exceed 50°F. The ovens must be calibrated monthly.
 - ii. Thermometers used to calibrate ovens should be calibrated prior to use according to a standard ice point and boiling point method.
 - b. Preheat a calibrated oven for at least 30 minutes prior to preparing products.
 - c. Use 17” x 11” baking sheet and follow all cooking instructions provided on the packaging for the product being tested.
 - d. Use oven rack in the middle of the oven.
 - e. Allow oven to return to baking temperature 10 minutes after removing prior sample product from oven prior to baking next sample

- IV. Product Preparation
 - a. Record temperature of product prior to cooking. All products must be between 0°F and 15°F when preparation is begun.

- b. Distribute the product evenly on the baking tray.
 - c. Remove any fragments from the baking tray.
 - i. Fragments are defined as:
 - 1. French fries - a strip that is < 2” in length, or any strips less than half of a full cut dimension.
 - 2. Formed products, if applicable – units not exhibiting the full shape dimensions shown on the product packaging.
 - d. Bake according to the cooking instructions for the specific quantity of product selected. If a label’s recommended method includes a range of cooking temperatures or times, the midpoint of those ranges shall be used.
 - e. When cooking time expires, immediately remove product from oven, and transfer from the baking sheet to a container that is at room temperature. Cool product 5 minutes at room conditions and then place uncovered in a freezer.
 - f. Once product is frozen, if the sample is to be transported to a laboratory, transfer to an appropriately labeled, sealed, container and keep frozen until analyzed for acrylamide.
 - g. The directions to the testing laboratory shall provide for the sample to be homogenized prior to analysis.
- V. The Unit Level or levels in samples grouped for Average-Level computation, shall be determined based on a representative, composite sample taken from each unit tested.

Sampling Methodology – Skillet or Griddle Preparation

Scope: Frozen potato products for which a home skillet or griddle is the recommended preparation method. **Note: if a product has a conventional oven preparation method provided in addition to the skillet/griddle preparation method, the product should be tested using the conventional oven method.**

- I. Sample
 - a. A single retail package, as prepared under Section IV below.
- II. Sampling Frequency
 - a. Collect and test at least 1 sample each from 5 or more lots of a particular SKU of Covered Product (or the maximum number of lots available for testing if fewer than 5). A product lot is defined as a 24-hour production period.
 - b. As provided in Section 3.1.1.2 of the consent judgment, average the results of all samples to determine the “Average Level” for the specific product identified in the Notice of Violation. The mean and standard deviation shall be calculated using the sampling data. Any data points that are more than three standard deviations outside the mean shall be discarded once, and the mean and standard deviation recalculated using the remaining data points. The mean determined in accordance with this procedure shall be deemed the “Average Level.”
- III. Equipment Preparation
 - a. Electric household range with a 12” non-stick skillet, or electric griddle, per packaging instructions.
 - b. Preheat skillet or electric griddle as directed on packaging after applying cooking oil or non-stick cooking spray as directed.
 - c. Test temperature of oil to confirm that oil is within ten degrees of cooking temperature recommended on packaging.
- IV. Product Preparation
 - a. Record temperature of product prior to cooking. All products must be between 0°F and 15°F when preparation is begun.
 - b. Select a quantity of product from the options in the cooking instructions.
 - c. Distribute the product evenly on the skillet or griddle to form a pile that is not less than ½” thick.
 - d. Stir or flip product as provided in cooking directions, allowing product not to cook on any one side more than 50% of total cooking time.
 - e. When cooking time expires, immediately transfer product from the skillet or griddle to a container that is at room temperature. Cool product 5 minutes at room conditions and then place uncovered in a freezer.
 - f. Once product is frozen, if the sample is to be transported to a laboratory, transfer to an appropriately labeled, sealed container and keep frozen until analyzed for acrylamide.

- g. The directions to the testing laboratory shall provide for the sample to be homogenized prior to analysis.
- V. The Unit Level or levels in samples grouped for Average-Level computation, shall be determined based on a representative, composite sample taken from each unit tested.

Data recorded for each sample shall include verification of oil temperature prior to cooking; cooking method details; initial gross weight, hash brown temperature, canola oil weight used, skillet ID, cook time, cook temperature, final product weight, cooling at room temperature time, cooled to room temperature final temperature (as applicable), shipping weight of sample (as applicable), and shipping date (as applicable).