



FILED
ALAMEDA COUNTY

SEP 19 2019

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deputy

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

CENTER FOR ENVIRONMENTAL HEALTH,)	Case No. RG 16-838609
)	
Plaintiff,)	PROPOSED CONSENT JUDGMENT
)	AS TO THE FRENCH'S FOOD
v.)	COMPANY, LLC
)	
SNIKIDDY, LLC, <i>et al.</i> ,)	
)	
Defendants.)	
)	
)	
)	

1. DEFINITIONS

1.1 The "Complaint" means the operative complaint in the above-captioned matter.

1.2 "Covered Products" means fried or baked potato or sweet potato based snack food products, including sliced Potato Chips and Shoestring Potatoes (as defined below) and snack food products containing potato or sweet potato flour (such as extruded vegetable chips, vegetable sticks, and vegetable straws). An initial list of the Covered Products is attached hereto as Exhibit A.

1 1.3 “Potato Chips” means sliced potato chips.
2 1.4 “Shoestring Potatoes” means long, stick-like slices of raw potato that are deep-
3 fried until crisp.
4 1.5 “Extruded Products” means all Covered Products other than Potato Chips and
5 Shoestring Potatoes. It is the Parties’ intent that the Extruded Products referenced in this Consent
6 Judgment are the kind of products falling within Type 4 in the “extruded, pellet, and baked
7 products” category in the Consent Judgment as to Defendant Snak King Corporation, entered
8 August 31, 2011, in *People v. Snyder’s of Hanover, et al.*, Alameda County Superior Court Case
9 No. RG 09-455286.¹
10 1.6 “Effective Date” means the date on which notice of entry of this Consent
11 Judgment by the Court is served upon Settling Defendant.

12 **2. INTRODUCTION**

13 2.1 The Parties to this Consent Judgment are the Center for Environmental Health, a
14 California non-profit corporation (“CEH”), and The French’s Food Company, LLC (“Settling
15 Defendant”). CEH and Settling Defendant (the “Parties”) enter into this Consent Judgment to
16 settle certain claims asserted by CEH against Settling Defendant as set forth in the operative
17 complaint (“Complaint”) in the above-captioned matter.

18 2.2 On or about July 27, 2016, CEH provided a 60-day Notice of Violation of
19 Proposition 65 to the California Attorney General, the District Attorneys of every county in
20 California, the City Attorneys of every California city with a population greater than 750,000,
21 and to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing
22 persons to acrylamide contained in fried or baked potato based snack foods without first
23 providing a clear and reasonable Proposition 65 warning. On or about August 26, 2016, CEH
24 provided a 60-day Amended Notice of Violation of Proposition 65 to Settling Defendant and the
25

26 ¹ These products are referred to as “Group C, Type 4” products in Exhibit A to the Snak King Consent Judgment,
27 which is attached hereto as Exhibit B and available on the Attorney General’s website at
<https://oag.ca.gov/prop65/litigation>.

1 same set of public enforcers alleging that Settling Defendant violated Proposition 65 by exposing
2 persons to acrylamide contained in Covered Products without first providing a clear and
3 reasonable Proposition 65 warning.

4 2.3 Settling Defendant is a corporation or other business entity that manufactures,
5 distributes, sells, or offers for sale Covered Products that are sold in the State of California or has
6 done so in the past.

7 2.4 On November 10, 2016, CEH filed the Complaint in the above-captioned matter,
8 naming Settling Defendant as an original defendant.

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

16 2.6 This Consent Judgment shall apply to and bind Settling Defendant and its
17 successors and assigns, and any of their subsidiaries or affiliated entities under common
18 ownership that distribute, sell, or offer for sale Covered Products in the State of California,
19 including, but not limited to McCormick and Company, Incorporated.

20 2.7 Nothing in this Consent Judgment is or shall be construed as an admission by the
21 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with
22 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
23 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
24 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any
25 other pending or future legal proceedings. This Consent Judgment is the product of negotiation
26 and compromise and is accepted by the Parties solely for purposes of settling, compromising, and
27 resolving issues disputed in this Action.

1 **3. INJUNCTIVE RELIEF**

2 3.1 **Reformulation of Covered Products.** Commencing nine months after the
3 Effective Date (the “Compliance Date”), Settling Defendant shall not purchase, manufacture,
4 ship, sell, or offer for sale Covered Products that will be sold or offered for sale in California that
5 exceed the following acrylamide concentration levels (the “Reformulation Levels”):

6 3.1.1 For Potato Chips and Shoestring Potatoes (collectively “Chips”):

7 3.1.1.1 The average acrylamide concentration shall not exceed 281 parts
8 per billion (“ppb”) by weight (the “Chips Average Level”). The Chips Average Level is
9 determined by randomly selecting and testing at least 1 sample each from 5 different lots of a
10 particular type Potato Chips or Shoestring Potatoes (or the maximum number of lots available for
11 testing if less than 5) during a testing period of at least 60 days.

12 3.1.1.2 The acrylamide concentration of any individual unit of Potato
13 Chips or Shoestring Potatoes shall not exceed 350 ppb by weight, based on a representative
14 composite sample taken from the individual unit being tested (the “Chips Unit Level”).

15 3.1.2 For Extruded Products:

16 3.1.2.1 The average acrylamide concentration shall not exceed 350 ppb by
17 weight (the “Extruded Products Average Level”). The Extruded Products Average Level is
18 determined by randomly selecting and testing at least 1 sample each from 5 different lots of a
19 particular type of Extruded Product (or the maximum number of lots available for testing if less
20 than 5) during a testing period of at least 60 days.

21 3.1.2.2 The acrylamide concentration of any individual unit of Extruded
22 Products shall not exceed 490 ppb by weight, based on a representative composite sample taken
23 from the individual unit being tested (the “Extruded Products Unit Level”).

24 3.1.2.3 The acrylamide concentration of a Covered Product shall be
25 determined by use of a test performed by an accredited laboratory using either GC/MS (Gas
26 Chromatograph/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry),
27 or any other testing method agreed upon by the Parties.

1 3.2 **Clear and Reasonable Warnings.** A Covered Product purchased, manufactured,
2 shipped, sold or offered for sale by Settling Defendant after the Compliance Date may, as an
3 alternative to meeting the Reformulation Levels set forth in Section 3.1, be sold or offered for
4 sale in California with a Clear and Reasonable Warning that complies with the provisions of this
5 Section 3.2. A Clear and Reasonable Warning under this Agreement shall state:

6 **WARNING:** Consuming this product can expose you to [[chemicals, including
7 *other listed substance* and]] acrylamide, which [is] [[are]] known to the State of
8 California to cause cancer. [[Acrylamide is a chemical that can form in some foods
9 during high-temperature cooking processes, such as frying, roasting, and baking.]]
10 For more information go to www.P65Warnings.ca.gov/food.

11 The double-bracketed portion of the warning is optional for Settling Defendant. A
12 reproductive toxicant warning may optionally be provided. The word “**WARNING**” shall be
13 displayed in all capital letters and bold print. This warning statement shall be prominently
14 displayed on the Covered Product, on the packaging of the Covered Product, or on a placard or
15 sign provided that the statement is displayed with such conspicuousness, as compared with other
16 words, statements or designs as to render it likely to be seen, read and understood by an ordinary
17 individual prior to sale. If the warning statement is displayed on the Covered Product’s label, it
18 must be set off from other surrounding information and enclosed in a text box. If the warning
19 statement is displayed on a placard or sign where the Covered Product is offered for sale, the
20 warning placard or sign must enable an ordinary individual to easily determine which specific
21 Covered Products the warning applies to, and to differentiate between that Covered Product and
22 other products to which the warning statement does not apply. For internet, catalog or any other
23 sale where the consumer is not physically present, the warning statement shall be displayed in
24 such a manner that it is likely to be read and understood by an ordinary individual prior to the
25 authorization of or actual payment. If Settling Defendant elects to avail itself of the warning
26 option provided by this Section 3.2, Settling Defendant shall provide written notice to CEH prior
27 to Settling Defendant’s first distribution or sale of Covered Products with warnings under this
28

1 Section 3.2, and Settling Defendant concurrently shall make the additional payment specified in
2 Section 5.2.4 below.

3 **4. ENFORCEMENT**

4 4.1 **General Enforcement Provisions.** CEH may, by motion or application for an
5 order to show cause before this Court, enforce the terms and conditions contained in this Consent
6 Judgment. Any action to enforce alleged violations of Section 3 by Settling Defendant shall be
7 brought exclusively pursuant to this Section 4, and be subject to the meet and confer requirement
8 of Section 4.2.5 if applicable.

9 4.2 **Enforcement of Reformulation Commitment.**

10 4.2.1 Covered Product Identification. Within 30 days after the Effective Date,
11 Settling Defendant shall notify CEH of a means sufficient to allow CEH to identify Covered
12 Products supplied or offered by Settling Defendant for sale on or after that date, for example, a
13 unique brand name or characteristic system of product numbering or labeling, unless such
14 information is provided in Exhibit A. Upon written request by CEH, but no more than once in
15 any calendar year, Settling Defendant shall, within 30 days of receiving a request from CEH,
16 update the information provided to CEH pursuant to this Section 4.2.1 by notifying CEH of a
17 means sufficient to allow CEH to identify Covered Products currently supplied or offered for sale
18 by Settling Defendant. If CEH is unable to determine whether a particular product is a Covered
19 Product as to Settling Defendant based on the information provided to CEH pursuant to this
20 Section 4.2.1, Settling Defendant shall, to the extent reasonably necessary, cooperate in good
21 faith with CEH in determining whether the product at issue is a Covered Product supplied or
22 offered for sale by Settling Defendant. Information provided to CEH pursuant to this Section
23 4.2.1, including but not limited to the identities of parties to contracts between Settling Defendant
24 and third parties, may be designated by Settling Defendant as competitively sensitive confidential
25 business information, and if so designated shall not be disclosed to any person without the written
26 permission of Settling Defendant. Any motions or pleadings or any other court filings that may
27 reveal information designated as competitively sensitive confidential business information

1 pursuant to this Section shall be submitted in accordance with California Rules of Court 8.46 and
2 2.550, *et seq.*, if applicable.

3 4.2.2 Notice of Violation. In the event that CEH purchases a Covered Product
4 in California that was sold or offered for sale by a Settling Defendant with a best-by or sell-by (or
5 equivalent) date or other code that reflects that the Covered Product was manufactured on or after
6 the Compliance Date, and for which CEH has laboratory test results showing that the Covered
7 Product has an acrylamide level exceeding the applicable Unit Level, and which lacks a Clear and
8 Reasonable Warning that complies with Section 3.2, and which is not produced in the same lot as
9 a Covered Product for which a Notice of Violation pursuant this Section has previously been
10 issued, CEH may serve a Notice of Violation on the person(s) identified in Section 8.2 pursuant
11 to this Section.

12 4.2.3 Service of Notice of Violation and Supporting Documentation.

13 4.2.3.1 Subject to Section 4.2.2, the Notice of Violation shall be sent to the
14 person(s) identified in Section 8.2 to receive notices for Settling Defendant, and must be served
15 within sixty (60) days of the later of the date the Covered Products at issue were purchased or
16 otherwise acquired by CEH or the date that CEH can reasonably determine that the Covered
17 Products at issue were manufactured, shipped, sold, or offered for sale by Settling Defendant,
18 provided, however, that CEH may have up to an additional sixty (60) days to send the Notice of
19 Violation if, notwithstanding CEH's good faith efforts, the test data required by Section 4.2.3.2
20 below cannot be obtained by CEH from its laboratory before expiration of the initial sixty (60)
21 day period.

22 4.2.3.2 The Notice of Violation shall, at a minimum, set forth: (a) the date
23 the Covered Products were purchased; (b) the location at which the Covered Products were
24 purchased; (c) a description of the Covered Products giving rise to the alleged violation,
25 including the name and address of the retail entity from which the sample was obtained and
26 pictures of the product packaging from all sides, which identifies the product lot; and (d) all test
27 data obtained by CEH regarding the Covered Products and supporting documentation sufficient
28

1 for validation of the test results, including any laboratory reports, quality assurance reports, and
2 quality control reports associated with testing of the Covered Products.

3 4.2.4 Notice of Election of Response. No more than thirty (30) days after
4 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to
5 CEH whether it elects to contest the allegations contained in a Notice of Violation (“Notice of
6 Election”). Failure to provide a Notice of Election within thirty (30) days of effectuation of
7 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.
8 Upon notice to CEH, Settling Defendant may have up to an additional sixty (60) days to elect if,
9 notwithstanding Settling Defendant’s good faith efforts, Settling Defendant is unable to verify the
10 test data provided by CEH before expiration of the initial thirty (30) day period.

11 4.2.4.1 If a Notice of Violation is contested, the Notice of Election shall
12 include all documents upon which Settling Defendant is relying to contest the alleged violation,
13 including all available test data. If Settling Defendant or CEH later acquires additional test or
14 other data regarding the alleged violation during the meet and confer period described in Section
15 4.2.5, they shall notify the other Party and promptly provide all such data or information to the
16 Party unless either the Notice of Violation or Notice of Election has been withdrawn.

17 4.2.5 Meet and Confer. If a Notice of Violation is contested, CEH and Settling
18 Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of
19 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw
20 the original Notice of Election contesting the violation and serve a new Notice of Election to not
21 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay
22 \$2,500 in addition to any payment required under this Consent Judgment. At any time, CEH may
23 withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the result shall be
24 as if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of
25 Violation results within thirty (30) days of a Notice of Election to contest, CEH may file an
26 enforcement motion or application pursuant to Section 4.1. In any such proceeding, CEH may
27

1 seek whatever fines, costs, penalties, attorneys' fees, or other remedies are provided by law for an
2 alleged failure to comply with the Consent Judgment.

3 4.2.6 Non-Contested Notices. If Settling Defendant elects to not contest the
4 allegations in a Notice of Violation, it shall undertake corrective action(s) and make payments, if
5 any, as set forth below.

6 4.2.6.1 Settling Defendant shall include in its Notice of Election a detailed
7 description with supporting documentation of the corrective action(s) that it has undertaken or
8 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,
9 provide reasonable assurance that all Covered Products having the same lot number as that of the
10 Covered Product identified in CEH's Notice of Violation (the "Noticed Covered Products") will
11 not be thereafter sold in California or offered for sale to California customers by Settling
12 Defendant and that Settling Defendant has sent instructions to any retailers or customers that offer
13 the Noticed Covered Products for sale to cease offering the Noticed Covered Products for sale to
14 California consumers and to return all such Noticed Covered Products to Settling Defendant if
15 Settling Defendant has reason to believe the Noticed Covered Products are still offered for sale to
16 California consumers. Settling Defendant shall keep for a period of one year and make available
17 to CEH upon reasonable notice (which shall not exceed more than one request per year) for
18 inspection and copying records of any correspondence regarding the foregoing. If there is a
19 dispute over the corrective action, Settling Defendant and CEH shall meet and confer before
20 seeking any remedy in court. In no case shall CEH issue more than one Notice of Violation per
21 manufacturing lot of a type of Covered Product, nor shall CEH issue more than two Notices of
22 Violation in the first calendar year following the Compliance Date.

23 4.2.6.2 If the Notice of Violation is the first, second, third, or fourth Notice
24 of Violation received by Settling Defendant under Section 4.2.1 that was not successfully
25 contested or withdrawn, then Settling Defendant shall pay \$15,000 for each Notice of Violation.
26 If Settling Defendant has received more than four (4) Notices of Violation under Section 4.2.2
27 that were not successfully contested or withdrawn, then Settling Defendant shall pay \$25,000 for

1 each Notice of Violation. If Settling Defendant produces with its Notice of Election test data for
2 the Covered Product that: (i) was conducted prior to the date CEH gave Notice of Violation;
3 (ii) was conducted on the same or same type of Covered Product; and (iii) demonstrates
4 acrylamide levels below the applicable Reformulation Level, then any payment under this
5 Section shall be reduced by 100 percent (100%) for the first Notice of Violation, by seventy-five
6 percent (75%) for the second Notice of Violation, and by fifty percent (50%) for any subsequent
7 Notice of Violation. In no case shall Settling Defendant be obligated to pay more than \$100,000
8 for uncontested Notices of Violation in any calendar year irrespective of the total number of
9 Notices of Violation issued.

10 4.2.7 Payments. Any payments under Section 4.2 shall be made by check
11 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a
12 Notice of Election triggering a payment and shall be used as reimbursement for costs for
13 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse
14 attorneys’ fees and costs incurred in connection with these activities.

15 4.3 **Repeat Violations**. If Settling Defendant has received four (4) or more Notices of
16 Violation concerning the same type of Covered Product that were not successfully contested or
17 withdrawn in any two (2) year period then, at CEH’s option, CEH may seek whatever fines,
18 costs, penalties, attorneys’ fees, or other remedies that are provided by law for failure to comply
19 with the Consent Judgment. Prior to seeking such relief, CEH shall meet and confer with Settling
20 Defendant for at least thirty (30) days to determine if Settling Defendant and CEH can agree on
21 measures that Settling Defendant can undertake to prevent future alleged violations.

22 5. PAYMENTS

23 5.1 **Payments by Settling Defendant**. Within twenty (20) calendar days of the
24 Effective Date, Settling Defendant shall pay the total sum of \$100,000 as a settlement payment as
25 further set forth in this Section.

26 5.2 **Allocation of Payments**. The total settlement amount for Settling Defendant shall
27 be paid in four (4) separate checks in the amounts specified below and delivered as set forth

1 below. Any failure by Settling Defendant to comply with the payment terms herein shall be
2 subject to a stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each
3 day the full payment is not received after the applicable payment due date set forth in Section 5.1.
4 The late fees required under this Section shall be recoverable, together with reasonable attorneys'
5 fees, in an enforcement proceeding brought pursuant to Section 4 of this Consent Judgment. The
6 funds paid by Settling Defendant shall be allocated as set forth below between the following
7 categories and made payable as follows:

8 5.2.1 \$17,145 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).
9 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §
10 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
11 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
12 payment for \$12,858.75 shall be made payable to OEHHA and associated with taxpayer
13 identification number 68-0284486. This payment shall be delivered as follows:

14 For United States Postal Service Delivery:

15 Attn: Mike Gyurics
16 Fiscal Operations Branch Chief
17 Office of Environmental Health Hazard Assessment
18 P.O. Box 4010, MS #19B
19 Sacramento, CA 95812-4010

20 For Non-United States Postal Service Delivery:

21 Attn: Mike Gyurics
22 Fiscal Operations Branch Chief
23 Office of Environmental Health Hazard Assessment
24 1001 I Street, MS #19B
25 Sacramento, CA 95814

26 The CEH portion of the civil penalty payment for \$4,286.25 shall be made
27 payable to the Center for Environmental Health and associated with taxpayer identification
28 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
Street, San Francisco, CA 94117.

 5.2.2 \$12,855 as an Additional Settlement Payment ("ASP") to CEH pursuant
to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204.

1 CEH intends to restrict use of the ASPs received from the Consent Judgment before the Court to
2 the following purposes: the funds will be placed in CEH's Toxics in Food Fund and used to
3 support CEH programs and activities that seek to educate the public about acrylamide and other
4 toxic chemicals in food, to work with the food industry and agriculture interests to reduce
5 exposure to acrylamide and other toxic chemicals in food, and to thereby reduce the public health
6 impacts and risks of exposure to acrylamide and other toxic chemicals in food sold in California.
7 CEH shall obtain and maintain adequate records to document that ASPs are spent on these
8 activities and CEH agrees to provide such documentation to the Attorney General within thirty
9 days of any request from the Attorney General. The payment pursuant to this Section shall be
10 made payable to the Center for Environmental Health and associated with taxpayer identification
11 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
12 Street, San Francisco, CA 94117.

13 5.2.3 \$70,000 as a reimbursement of a portion of CEH's reasonable attorneys'
14 fees and costs. The attorneys' fees and cost reimbursement shall be made payable to the
15 Lexington Law Group and associated with taxpayer identification number 94-3317175. This
16 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
17 94117.

18 5.2.4 If, on the Compliance Date, Settling Defendant has availed itself of the warning
19 option provided for by Section 3.2, Settling Defendant shall make an additional payment of
20 \$50,000 as a civil penalty, concurrently with its written notice as provided in Section 3.2. This
21 additional civil penalty payment shall be apportioned in accordance with Health & Safety Code §
22 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
23 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
24 payment for \$37,500 shall be made payable to OEHHA, associated with taxpayer identification
25 number 68-0284486, and sent to the OEHHA address set forth in section 5.2.1 above. The CEH
26 portion of the additional civil penalty payment for \$12,500 shall be made payable to the Center
27 for Environmental Health and associated with taxpayer identification number 94-3251981. This

1 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
2 94117 within 10 business days of the Compliance Date.

3 **6. MODIFICATION AND DISPUTE RESOLUTION**

4 6.1 **Modification.** This Consent Judgment may be modified from time to time by
5 express written agreement of the Parties, with the approval of the Court, or by an order of this
6 Court upon motion and in accordance with law.

7 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
8 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
9 modify the Consent Judgment.

10 **7. CLAIMS COVERED AND RELEASE**

11 7.1 Provided that Settling Defendant complies in full with its obligations under
12 Section 5 hereof, this Consent Judgment is a full, final, and binding resolution between CEH on
13 behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries,
14 affiliated entities that are under common ownership, directors, officers, employees, agents,
15 shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to
16 which Settling Defendant directly or indirectly distributes or sells Covered Products, including
17 but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and
18 licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on
19 failure to warn about alleged exposure to acrylamide contained in Covered Products that were
20 sold, distributed or offered for sale by Settling Defendant prior to the Compliance Date.

21 7.2 Provided that Settling Defendant complies in full with its obligations under
22 Section 5 hereof, CEH, for itself, its agents, successors and assigns, releases, waives, and forever
23 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream
24 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
25 common law claims that have been or could have been asserted by CEH individually or in the
26 public interest regarding the failure to warn about exposure to acrylamide arising in connection
27 with Covered Products manufactured, distributed or sold by Settling Defendant prior to the

1 Compliance Date.

2 7.3 Provided that Settling Defendant complies in full with its obligations under
3 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant
4 shall constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and
5 Downstream Defendant Releasees with respect to any alleged failure to warn about acrylamide in
6 Covered Products manufactured, distributed or sold by Settling Defendant after the Compliance
7 Date.

8 **8. PROVISION OF NOTICE**

9 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
10 notice shall be sent by first class and electronic mail to:

11 Howard Hirsch
12 Lexington Law Group
13 503 Divisadero Street
14 San Francisco, CA 94117
hhirsch@lexlawgroup.com

15 8.2 When Settling Defendant is entitled to receive any notice under this Consent
16 Judgment, the notice shall be sent by first class and electronic mail to:

17 Greg Sperla
18 George Gigounas
19 400 Capitol Mall, Suite 2400
Sacramento, CA 95814
greg.sperla@dlapiper.com

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

22 **9. COURT APPROVAL**

23 9.1 This Consent Judgment shall become effective upon the date signed by CEH and
24 Settling Defendant, whichever is later, provided however, that CEH shall prepare and file a
25 Motion for Approval of this Consent Judgment and Settling Defendant shall support entry of this
26 Consent Judgment by the Court.

27 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or

1 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
2 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

3 **10. GOVERNING LAW AND CONSTRUCTION**

4 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California.

6 **11. ATTORNEYS' FEES**

7 11.1 A Party who unsuccessfully brings or contests an action, motion, or application
8 arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable
9 attorneys' fees and costs.

10 11.2 Nothing in this Section 11 shall preclude a Party from seeking an award of
11 sanctions pursuant to law.

12 **12. ENTIRE AGREEMENT**

13 12.1 This Consent Judgment contains the sole and entire agreement and understanding
14 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
15 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
16 and therein. There are no warranties, representations, or other agreements between the Parties
17 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
18 other than those specifically referred to in this Consent Judgment have been made by any Party
19 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
20 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
21 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
22 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
23 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
24 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
25 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
26 whether or not similar, nor shall such waiver constitute a continuing waiver.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13. RETENTION OF JURISDICTION

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

14. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

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

15. NO EFFECT ON OTHER SETTLEMENTS

15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim against an entity that is not Settling Defendant on terms that are different from those contained in this Consent Judgment.

16. EXECUTION IN COUNTERPARTS

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

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


Dated: 7/29/19



Judge of the Superior Court

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO STIPULATED:

Dated: <u>5/16</u> , 2019	CENTER FOR ENVIRONMENTAL HEALTH  _____ Signature <u>Michael Green</u> _____ Printed Name <u>CEO</u> _____ Title
Dated: _____, 2019	THE FRENCH'S FOOD COMPANY, LLC _____ Signature _____ Printed Name _____ Title

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO STIPULATED:

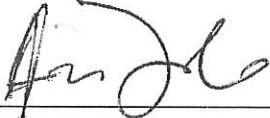
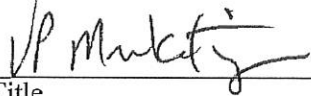
Dated: _____, 2019	CENTER FOR ENVIRONMENTAL HEALTH _____ Signature _____ Printed Name _____ Title
Dated: <u>May 10</u> , 2019	THE FRENCH'S FOOD COMPANY, LLC  _____ Signature <u>Andrew Faust</u> _____ Printed Name  _____ Title

Exhibit A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. French's Franks Red Hot Buffalo Potato Snack
2. French's Franks Red Hot Buffalo Potato Stick
3. French's Original Potato Snack
4. French's Original Potato Stick
5. French's Original Onion Snack
6. French's Original Onion Sticks

Exhibit B

Exhibit A

COVERED PRODUCTS

CORN, GRAIN, AND LEGUME CHIPS AND STICKS

Group A. All corn, grain, and legume-based chips and sticks manufactured by Settling Defendant, including El Sabroso Guacachips, El Sabroso Jalapenitos, Private Label Tortilla Chips, Private Label Organic Blue Tortilla Chips, Private Label Organic Fiesta Tortilla Chips, Private Label Organic White Tortilla Chips, Whole Earth Really Seedy Tortilla Chips, El Sabroso Reduced Fat Tortilla Chips, Private Label Reduced Fat Tortilla Chips, Granny Goose Restaurant Style Tortilla Chips, Private Label Organic Yellow Rounds Tortilla Chips, El Sabroso Salsitas, El Sabroso Yellow Rounds Tortilla Chips, Granny Goose White Corn Tortilla Strips, Private Label White Corn Tortilla Strips, El Sabroso Chile Y Limon Churritos, El Sabroso Chile Y Limon Corn Chips, Granny Goose Corn Chips

Type 1: Triangle-shaped chips

Type 2: Round, rolled, and other non-triangle or non-strip-shaped chips

Type 3: Strip-shaped chips

Type 4: Corn chips and corn sticks (e.g., churritos)

POPCORN

Group B. All popcorn products, including Snak King Popcorn (Cheddar Cheese and Butter), Granny Goose Butter Popcorn, Kettle Corn, Whole Earth Lightly Salted Popcorn, Private Label Organic Popcorn (White Cheddar and Light Salt), Granny Goose Caramel Popcorn

Type 1: Popcorn (plain, flavored and kettle)

Type 2: Caramel and candy corn (with or without nuts)

EXTRUDED, PELLET, AND BAKED PRODUCTS

Group C. All extruded, pellet, and baked products (excluding baked products in Group A), including Private Label Lavash Chips, Private Label Salted Pita Chips, Whole Earth Salted Pita Chips, Private Label Hot Fries, Snak King Hot Fries, Private Label Puffed Rice or Corn, Snak King Cheese Puffs, Private Label Cheese Puffs, Private Label Rice Balls, Private Label Multigrain Chips, Private

Label Baked Cheese Curls, Granny Goose Cheese Blazin Curls, Snak King Baked Cheese Curls, Snak King Fried Cheese Curls, Snak King Hot Cheese Curls, Jensen Orchards Veggie Chips, Private Label Veggie Sticks, Private Label Mini Veggie Chips, El Sabroso Duros, Private Label Popped Chips

Type 1: Pita and lavash chips (all flavors)

Type 2: Puffs, fries, baked curls, and multigrain chips (all flavors)

Type 3: Fried curls (all flavors)

Type 4: Potato, vegetable, and other grain-based pellet chips and sticks (all flavors)

Type 5: Duros (all flavors)

PRETZELS

Group D. All pretzels

Type 1: Twists and sticks

OTHER

Group E. All pork rinds and "cracklins," including El Sabroso Regular Pork Rinds, El Sabroso Regular Pork Rinds with Salsa, El Sabroso Hot & Spicy Pork Rinds, El Sabroso Regular Cracklins, and El Sabroso Hot & Spicy Cracklins.

Type 1: Pork rinds and "cracklins"