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**ENDORSED  
FILED  
ALAMEDA COUNTY**

**DEC 03 2019**

**CLERK OF THE SUPERIOR COURT**

*Alanna Fairman*  
**Deputy**

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

CENTER FOR ENVIRONMENTAL HEALTH,	)	Case No. RG 16-838609
Plaintiff,	)	
v.	)	<b>[PROPOSED] CONSENT JUDGMENT</b>
SNIKIDDY, LLC, <i>et al.</i> ,	)	<b>AS TO UTZ QUALITY FOODS, LLC,</b>
Defendants.	)	<b>SNIKIDDY, LLC, AND GOOD</b>
	)	<b>HEALTH NATURAL PRODUCTS,</b>
	)	<b>LLC.</b>

**1. DEFINITIONS**

- 1.1 The "Complaint" means the operative complaint in the above-captioned matter.
- 1.2 "Compliance Date" means: (a) for Veggie Extruded Products: December 1, 2020; and (b) for all other Covered Products: December 1, 2019.
- 1.3 "Covered Products" means fried or baked potato or sweet potato based snack food products, including Sliced Chips and Extruded Products (as defined below), and that are or were manufactured, distributed, sold, and/or offered for sale by Settling Defendants or their wholly owned subsidiaries or affiliates. Expressly excluded from "Covered Products" are: (1) all

1 products manufactured, distributed, shipped, sold, or offered for sale by Inventure Foods, Inc.  
2 and its predecessor, Poore Brothers, Inc. (collectively, “Inventure”) that are covered by the  
3 Consent Judgment between the Environmental Law Foundation and Inventure Foods, Inc. in prior  
4 Proposition 65 litigation relating to acrylamide bearing case name and number “*Environmental*  
5 *Law Foundation v. Birds Eye Foods, Inc.*, Case No. BC356591” and (2) all products  
6 manufactured, distributed, shipped, sold, or offered for sale by Inventure that are covered by the  
7 Consent Judgment between Center for Environmental Health and Inventure Foods, Inc. entered in  
8 this action on December 18, 2018. The prior and current subsidiaries and affiliates that have  
9 manufactured, distributed, shipped, sold and/or offered for sale Covered Products and are covered  
10 by this Consent Judgment, including but not limited to the release contained herein, are identified  
11 in Exhibit A (“Subsidiaries”).

12 1.4 “Sliced Chips” means sliced potato chips made from common chipping potatoes.

13 1.5 “Extruded Products” means all Covered Products other than Sliced Chips,  
14 including but not limited to Veggie Extruded Products and Non-Veggie Extruded Products. It is  
15 the Parties’ intent that the Extruded Products referenced in this Consent Judgment are the kind of  
16 products falling within Type 4 in the “extruded, pellet, and baked products” category in the  
17 Consent Judgment as to Defendant Snak King Corporation, entered August 31, 2011, in *People v.*  
18 *Snyder’s of Hanover, et al.*, Alameda County Superior Court Case No. RG 09-455286.<sup>1</sup>

19 1.6 “Veggie Extruded Products” means Good Health brand veggie snack foods  
20 manufactured utilizing a potato-based pellet, including veggie chips, sticks, and straws.

21 1.7 “Non-Veggie Extruded Products” means all Extruded Products that do not fall  
22 under the definition of “Veggie Extruded Products.”

23 1.8 “Effective Date” means the date on which the Court approves and enters this  
24 Consent Judgment.

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

1           1.9     “Similar” means having substantially similar vegetable ingredients and cooking  
2 processes.

3           **2.     INTRODUCTION**

4           2.1     The Parties to this Consent Judgment are the Center for Environmental Health, a  
5 California non-profit corporation (“CEH”), on the one hand, and Utz Quality Foods, LLC  
6 (“Utz”), Snikiddy, LLC (“Snikiddy”), and Good Health Natural Products, LLC (“Good Health”)  
7 (collectively, “Settling Defendants”), on the other hand. CEH and Settling Defendants  
8 (collectively, the “Parties”) enter into this Consent Judgment to settle certain claims asserted by  
9 CEH against Settling Defendants as set forth in the Complaint. Except as otherwise provided  
10 herein, this Consent Judgment is intended to apply to all Covered Products sold or offered for  
11 sale by Defendant Releasees (as the term is defined in paragraph 7.1) or Downstream Defendant  
12 Releases (as the term is defined in 7.1) in California.

13           2.2     On or about July 27, 2016, CEH provided a 60-day Notice of Violation of  
14 Proposition 65 to the California Attorney General, the District Attorneys of every county in  
15 California, the City Attorneys of every California city with a population greater than 750,000, to  
16 Utz, and to Good Health, alleging that Utz and Good Health violated Proposition 65 by exposing  
17 persons to acrylamide contained in fried or baked potato based snack foods without first  
18 providing a clear and reasonable Proposition 65 warning. On or about August 26, 2016, CEH  
19 provided a 60-day Amended Notice of Violation of Proposition 65 to Utz, Good Health, and the  
20 same set of public enforcers alleging that Utz and Good Health violated Proposition 65 by  
21 exposing persons to acrylamide contained in Covered Products without first providing a clear and  
22 reasonable Proposition 65 warning.

23           2.3     On or about August 26, 2016, CEH provided a 60-day Notice of Violation of  
24 Proposition 65 to the California Attorney General, the District Attorneys of every county in  
25 California, the City Attorneys of every California city with a population greater than 750,000,  
26 and to Snikiddy, alleging that Snikiddy violated Proposition 65 by exposing persons in California  
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1 to acrylamide contained in Covered Products without first providing a clear and reasonable  
2 Proposition 65 warning.

3           2.4     Each Settling Defendant is a corporation or other business entity that  
4 manufactures, distributes, sells, or offers for sale Covered Products that are sold in the State of  
5 California or has done so at times relevant to the Complaint.

6           2.5     On November 10, 2016, CEH filed the initial complaint in the above-captioned  
7 matter, naming, among other entities, Settling Defendants as original defendants. On April 11,  
8 2017, CEH filed the Complaint, which added additional defendants but did not amend CEH's  
9 allegations or claims against Settling Defendants. On May 22, 2018, CEH filed its Second  
10 Amended Complaint which also did not amend the allegations or claims against Settling  
11 Defendants.

12           2.6     For purposes of this Consent Judgment only, the Parties stipulate that this Court  
13 has jurisdiction over the allegations of violations contained in the Complaint and personal  
14 jurisdiction over Settling Defendants as to the acts alleged in the Complaint, that venue is proper  
15 in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent  
16 Judgment as a full and final resolution of all claims which were or could have been raised in the  
17 Complaint based on the facts alleged therein and in the Notice with respect to Covered Products  
18 manufactured, distributed, shipped, sold and/or offered for sale by Settling Defendants and their  
19 Subsidiaries.

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. Except as otherwise provided for herein,  
24 nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument,  
25 or defense the Parties may have in any other pending or future legal proceedings. This Consent  
26 Judgment is the product of negotiation and compromise and is accepted by the Parties solely for  
27 purposes of settling, compromising, and resolving issues disputed in this action in an efficient and  
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1 economic manner.

2 **3. INJUNCTIVE RELIEF**

3 **3.1 Reformulation of Covered Products.** Except as otherwise permitted by Section  
4 3.2 of this Consent Judgment, upon the applicable Compliance Date, Settling Defendants and  
5 their Subsidiaries shall not manufacture, ship, sell, or offer for sale Covered Products that will be  
6 sold or offered for sale in California that exceed the following acrylamide concentration levels  
7 (the “Reformulation Levels”), such concentration to be determined by use of a test performed by  
8 an accredited laboratory using either GC/MS (Gas Chromatograph/Mass Spectrometry), LC-  
9 MS/MS (Liquid Chromatograph-Mass Spectrometry), or any other testing method agreed upon  
10 by the Parties. Any samples of a Covered Product tested under 3.1.1 or 3.1.2 shall be  
11 homogenized before testing for acrylamide content.

12 **3.1.1 For Sliced Chips:**

13 **3.1.1.1** The average acrylamide concentration shall not exceed 281  
14 parts per billion (“ppb”) by weight (the “Sliced Chips Average Level”). The Sliced Chips  
15 Average Level is determined by randomly selecting and testing at least one (1) sample each from  
16 at least three (3) and up to ten (10) different lots of a particular type of Covered Product that is a  
17 Sliced Chip (or the maximum number of lots available for testing if less than 3) during a testing  
18 period of at least three hundred sixty-five (365) days. The mean and standard deviation shall be  
19 calculated using the sampling data. Any data points that are more than three standard deviations  
20 outside the mean shall be discarded, and the mean and standard deviation recalculated using the  
21 remaining data points. The mean determined in accordance with this procedure shall be deemed  
22 the “Sliced Chip Average Level.”

23 **3.1.1.2** The acrylamide concentration of any individual unit of Sliced  
24 Chips shall not exceed 350 ppb by weight, based on a representative composite sample taken  
25 from the individual unit being tested (the “Sliced Chips Unit Level”).

26 **3.1.2 For Extruded Products:**

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1                           3.1.2.1    The average acrylamide concentration shall not exceed 350 ppb  
2 by weight (the “Extruded Products Average Level”). The Extruded Products Average Level is  
3 determined by randomly selecting and testing at least one (1) sample each from at least three (3)  
4 and up to ten (10) different lots of a particular type of Covered Product that is an Extruded  
5 Product (or the maximum number of lots available for testing if less than 3) during a testing  
6 period of at least three hundred sixty-five (365) days. The mean and standard deviation shall be  
7 calculated using the sampling data. Any data points that are more than three standard deviations  
8 outside the mean shall be discarded, and the mean and standard deviation recalculated using the  
9 remaining data points. The mean determined in accordance with this procedure shall be deemed  
10 the “Extruded Products Average Level.”

11                           3.1.2.2    The acrylamide concentration of any individual unit of  
12 Extruded Products shall not exceed 490 ppb by weight, based on a representative composite  
13 sample taken from the individual unit being tested (the “Extruded Products Unit Level”).  
14 For avoidance of doubt, Covered Products either purchased, manufactured, distributed, shipped,  
15 sold and/or offered for sale by Settling Defendants and their Subsidiaries prior to the applicable  
16 Compliance Date are not subject to the Reformulation Levels, even if such products are sold or  
17 offered for sale in California after the applicable Compliance Date.

18           3.2    **Clear and Reasonable Warnings.** A Covered Product purchased, manufactured,  
19 distributed, shipped, sold or offered for sale by Settling Defendants or their Subsidiaries may, as  
20 an alternative to meeting the Reformulation Levels, be sold or offered for sale in California with  
21 a Clear and Reasonable Warning that complies with the provisions of this Section 3.2. A Clear  
22 and Reasonable Warning may only be provided for Covered Products that Settling Defendants or  
23 their Subsidiaries reasonably believe do not meet the Reformulation Levels. A Clear and  
24 Reasonable Warning under this Consent Judgment shall state:

25                   **WARNING:** Consuming this product can expose you to chemicals including acrylamide,  
26 which are known to the State of California to cause cancer. Acrylamide is a chemical that  
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1 can form in some foods during high-temperature cooking processes, such as frying,  
2 roasting, and baking. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

3 The word “**WARNING**” shall be displayed in all capital letters and bold print. This warning  
4 statement shall be prominently displayed on the Covered Product, on the packaging of the Covered  
5 Product, or on a placard or sign provided that the statement is displayed with such conspicuousness,  
6 as compared with other words, statements or designs as to render it likely to be read and understood  
7 by an ordinary individual prior to sale. If the warning statement is displayed on the Covered  
8 Product’s label, it must be set off from other surrounding information and enclosed in a text box.  
9 If the warning statement is displayed on a placard or sign where the Covered Product is offered for  
10 sale, the warning placard or sign must enable an ordinary individual to easily determine which  
11 specific Covered Products the warning applies to, and to differentiate between that Covered  
12 Product and other products to which the warning statement does not apply. For internet, catalog or  
13 any other sale where the consumer is not physically present, the warning statement shall be  
14 displayed in such a manner that it is likely to be read and understood by an ordinary individual  
15 prior to the authorization of or actual payment. Nothing in this Consent Judgment requires that  
16 warnings be provided for Covered Products that are not sold or offered for sale in California. To  
17 comply with Section 3.2, Settling Defendants and their Subsidiaries may rely on the procedure for  
18 notifying retailers set out in Title 27, California Code of Regulations, section 25600.2, in effect as  
19 of the applicable Compliance Date.

20 If Settling Defendants intend to avail themselves of the warning option provided for in this  
21 Section as to Veggie Extruded Products pursuant to Section 5.2.4, they shall provide CEH with  
22 notice of their intention at least 14 days’ prior to applying Clear and Reasonable Warnings to  
23 Veggie Extruded Products sold or offered for sale in California, and Settling Defendants  
24 concurrently shall make the additional payment specified in Section 5.2.4 below.

25 The warning requirements set forth herein are imposed pursuant to the terms of this Consent  
26 Judgment, and are recognized by the Parties as not being the exclusive manner of providing a  
27 warning for the Covered Products. Warnings may be provided as specific in Proposition 65

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1 regulations for food in effect as of the applicable Compliance Date (Title 27, California Code of  
2 Regulations, section 25601, *et seq.*) or as such regulations may be amended in the future.

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 by CEH to enforce alleged violations of Section 3.1 by a Settling  
7 Defendants or to enforce future alleged violations of Proposition 65 with respect to acrylamide  
8 exposures from the Covered Products shall be brought exclusively pursuant to this Section 4, and  
9 be subject to the meet and confer requirement of Section 4.2.5 if applicable.

10 4.2 **Enforcement of Reformulation Commitment.**

11 4.2.1 Covered Product Identification. Within thirty (30) days after the  
12 Effective Date, Settling Defendants shall notify CEH of a means sufficient to allow CEH to  
13 identify Covered Products that are sold or offered for sale in California and that are sold or  
14 offered for sale by Settling Defendants and their Subsidiaries on or after that date, for example, a  
15 unique brand name or characteristic system of product numbering or labeling. Upon written  
16 request by CEH, but no more than once in any calendar year, Settling Defendants shall, within  
17 thirty (30) days of receiving a request from CEH, update the information provided to CEH  
18 pursuant to this Section 4.2.1 by notifying CEH of a means sufficient to allow CEH to identify  
19 Covered Products currently sold or offered for sale in California and that are sold or offered for  
20 sale by Settling Defendants and their Subsidiaries. All information provided to CEH pursuant to  
21 this Section 4.2.1 may be designated by Settling Defendants as competitively sensitive  
22 confidential business information, and if so designated shall not be disclosed to any person  
23 without the written permission of Settling Defendants. Any motions or pleadings or any other  
24 court filings that may reveal information designated as competitively sensitive confidential  
25 business information pursuant to this Section shall be submitted in accordance with California  
26 Rules of Court 8.46 and 2.550, *et seq.* The provisions of this Section 4.2.1 shall sunset seven (7)  
27 years after the applicable Compliance Date.

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1                   4.2.2    Notice of Violation. In the event that CEH purchases a Covered Product  
2 in California with a best-by or sell-by (or equivalent) date indicating that the Covered Product  
3 was sold or offered for sale by a Settling Defendant or a Subsidiary after the applicable  
4 Compliance Date, and for which CEH has laboratory test results showing that the Covered  
5 Product exceeds the applicable Unit Level, and which lacks a Clear and Reasonable Warning that  
6 complies with Section 3.2 (to the extent Settling Defendants have an option to warn as to that  
7 Covered Product), CEH may issue a Notice of Violation pursuant to this Section. CEH shall  
8 withdraw the Notice of Violation if Settling Defendants demonstrate that the Covered Product at  
9 issue was manufactured, distributed, shipped, sold or purchased before the applicable Compliance  
10 Date. Notwithstanding the foregoing, CEH may not issue a Notice of Violation with respect to a  
11 Covered Product if its packaging is marked or labeled with the statement “Not for Sale in  
12 California” or equivalent language so long as such statement is prominently placed upon such  
13 Covered Product’s label or other labeling, as compared with other words or statements on the  
14 label or labeling, as to render it likely to be read and understood by an ordinary individual under  
15 customer conditions of purchase or use. If Settling Defendants or their Subsidiaries mark or label  
16 a Covered Product with such a statement, Settling Defendants or their Subsidiaries shall include a  
17 letter to each of its retailer or distributor customers receiving that Covered Product notifying the  
18 customer that the Covered Product may not be sold in California.

19                   4.2.3    Service of Notice of Violation and Supporting Documentation.

20                   4.2.3.1    The Notice of Violation shall be sent to the person(s) identified in  
21 Section 8.2 to receive notices for Settling Defendants, and must be served within sixty (60) days  
22 of the later of the date the Covered Product at issue was purchased by CEH or the date that CEH  
23 can reasonably determine that the Covered Product at issue was manufactured, distributed,  
24 shipped, sold, or offered for sale by a Settling Defendant or a Subsidiary, provided, however, that  
25 CEH may have up to an additional sixty (60) days to send the Notice of Violation if,  
26 notwithstanding CEH’s good faith efforts, the test data required by Section 4.2.3.2 below cannot  
27 be obtained by CEH from its laboratory before expiration of the initial sixty (60) day period.

1                   4.2.3.2    The Notice of Violation shall, at a minimum, set forth: (a) the date  
2 the Covered Product was purchased; (b) the location at which the Covered Product was  
3 purchased; (c) a description of the Covered Product giving rise to the alleged violation, including  
4 the name and address of the retail entity from which the sample was obtained and pictures of the  
5 product packaging from all sides, which identifies the product lot, manufacturing date and best-  
6 by date and sell-by date (to the extent available); and (d) all test data obtained by CEH regarding  
7 the Covered Product and supporting documentation sufficient for validation of the test results,  
8 including any laboratory reports, quality assurance reports, and quality control reports associated  
9 with testing of the Covered Product.

10                   4.2.4    Notice of Election of Response. No more than thirty (30) days after  
11 effectuation of service of a Notice of Violation, Settling Defendants shall provide written notice  
12 to CEH whether they elect to contest the allegations contained in a Notice of Violation (“Notice  
13 of Election”). Failure to provide a Notice of Election within thirty (30) days of effectuation of  
14 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.  
15 Upon notice to CEH, Settling Defendants may have up to an additional sixty (60) days to elect if,  
16 notwithstanding Settling Defendants’ good faith efforts, Settling Defendants are unable to verify  
17 the test data provided by CEH before expiration of the initial thirty (30) day period.

18                   4.2.4.1    If a Notice of Violation is contested, the Notice of Election shall  
19 include all documents upon which Settling Defendants are relying to contest the alleged violation,  
20 including all available test data. If a Settling Defendant or CEH later acquires additional test or  
21 other data regarding the alleged violation during the meet and confer period described in Section  
22 4.2.5, it shall notify the other Party and promptly provide all such data or information to the Party  
23 unless either the Notice of Violation or Notice of Election has been withdrawn.

24                   4.2.5    Meet and Confer. If a Notice of Violation is contested, CEH and Settling  
25 Defendants shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of  
26 serving a Notice of Election contesting a Notice of Violation, Settling Defendants may withdraw  
27 the original Notice of Election contesting the violation and serve a new Notice of Election to not  
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1 contest the violation, provided, however, that, in this circumstance, Settling Defendants shall pay  
2 \$2,500 in addition to any other payment required under this Consent Judgment. At any time,  
3 CEH may withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the  
4 result shall be as if CEH never issued any such Notice of Violation. If no informal resolution of a  
5 Notice of Violation results within thirty (30) days of a Notice of Election to contest, CEH may  
6 file an enforcement motion or application pursuant to Section 4.1. The Parties may extend this  
7 thirty (30)-day time period by written stipulation. In any such proceeding, CEH may seek  
8 whatever fines, costs, penalties, attorneys' fees, or other remedies are provided by law for an  
9 alleged failure to comply with the Consent Judgment.

10 4.2.6 Non-Contested Notices. If Settling Defendants elect to not contest the  
11 allegations in a Notice of Violation, they shall undertake corrective action(s) and make payments,  
12 if any, as set forth below.

13 4.2.6.1 Settling Defendants shall include in their Notice of Election a  
14 detailed description with supporting documentation of the corrective action(s) that they have  
15 undertaken or propose to undertake to address the alleged violation. Any such correction shall, at  
16 a minimum, provide reasonable assurance that all Covered Products having the same lot number  
17 as that of the Covered Product identified in CEH's Notice of Violation (the "Noticed Covered  
18 Products") will not be thereafter sold or offered for sale in California by Settling Defendants or  
19 their Subsidiaries without a warning under Section 3.2, and that Settling Defendants have sent, or  
20 cause to be sent, instructions to any retailers or customers that offer the Noticed Covered  
21 Products for sale to cease offering the Noticed Covered Products for sale in California and to  
22 return all such Noticed Covered Products to Settling Defendants if Settling Defendants have  
23 reason to believe the Noticed Covered Products are still offered for sale in California. Settling  
24 Defendants shall keep for a period of one year and make available to CEH upon reasonable notice  
25 (which shall not exceed more than one request per year) for inspection and copying records of  
26 any non-privileged correspondence regarding the foregoing. If there is a dispute over the  
27 corrective action, Settling Defendants and CEH shall meet and confer before seeking any remedy

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1 in court. In no case shall CEH issue more than one Notice of Violation per manufacturing lot of a  
2 type of Covered Product, nor shall CEH issue more than two Notices of Violation for all Covered  
3 Products in the first year following the applicable Compliance Date. Nothing in this or any other  
4 section of this agreement envisions or requires any waiver of attorney-client or other privileges  
5 that may attach to written or oral communications.

6 4.2.6.2 If the Notice of Violation is based on a violation of the applicable  
7 Unit Level with respect to a single Covered Product, Settling Defendants will be excused from  
8 the corrective action obligation if Settling Defendants produce test results or other evidence  
9 showing that the Noticed Covered Products comply with the applicable Average Level. However,  
10 to avail themselves of this provision, Settling Defendants must provide CEH with all non-  
11 privileged acrylamide test data in its possession, custody, or control pertaining to the type of  
12 Covered Product at issue in the Notice of Violation that was performed within the year prior to  
13 Settling Defendants producing test results to CEH under this Section 4.2.6.2. If there is a dispute  
14 over whether Settling Defendants are excused from the corrective action, Settling Defendants and  
15 CEH shall meet and confer before seeking any remedy in court.

16 4.2.6.3 If the Notice of Violation is the first, second, third, or fourth Notice  
17 of Violation received by Settling Defendants under Section 4.2.2 that was not successfully  
18 contested or withdrawn, then Settling Defendants shall pay \$15,000 for each Notice of Violation.  
19 This shall be the sole and exclusive monetary remedy for such non-contested violations and CEH  
20 shall not be entitled to seek additional amounts for attorneys' fees and costs, civil penalties,  
21 payments in lieu of civil penalties, or other monetary relief. If Settling Defendants have received  
22 more than four (4) Notices of Violation under Section 4.2.2 that were not successfully contested  
23 or withdrawn, then Settling Defendants shall pay \$25,000 for each Notice of Violation. If  
24 Settling Defendants are not contesting the Notice of Violation and Settling Defendants produce  
25 with their Notice of Election test data for the specific SKU, or comparative like items, that  
26 reasonably demonstrate predicted acrylamide levels below the applicable Unit Level, then any  
27 payment under this Section shall be reduced by 100 percent (100%) for the first Notice of  
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1 Violation, by seventy-five percent (75%) for the second Notice of Violation, and by fifty percent  
2 (50%) for any subsequent Notice of Violation. If Settling Defendants are excused from the  
3 corrective action obligation pursuant to Section 4.2.6.2, then Settling Defendants shall pay \$2,500  
4 for that Notice of Violation. In no case shall Settling Defendants be obligated to pay more than  
5 \$100,000 for all Notices of Violation not successfully contested or withdrawn in any calendar  
6 year irrespective of the total number of Notices of Violation issued.

7 4.2.7 Payments. Any payments under Section 4.2 shall be made by check  
8 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a  
9 Notice of Election triggering a payment and shall be used as reimbursement for costs for  
10 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse  
11 attorneys’ fees and costs incurred in connection with these activities, and shall be the extent of all  
12 monetary remedies available to CEH under this Consent Judgment for a non-contested Notice of  
13 Violation.

14 4.3 **Repeat Violations**. If Settling Defendants have received four (4) or more Notices  
15 of Violation concerning the same type of Covered Product that were not successfully contested or  
16 withdrawn in any two (2) year period then, at CEH’s option, CEH may seek whatever fines,  
17 costs, penalties, attorneys’ fees, or other remedies that are provided by law for failure to comply  
18 with the Consent Judgment. Prior to seeking such relief, CEH shall meet and confer with Settling  
19 Defendants for at least thirty (30) days to determine if Settling Defendants and CEH can agree on  
20 measures that Settling Defendants can undertake to prevent future alleged violations.

## 21 **5. PAYMENTS**

22 5.1 **Payments by Settling Defendants**. Within twenty (20) calendar days of the date  
23 on which the Court approves and enters this Consent Judgment, Settling Defendants shall pay the  
24 total sum of \$585,000 as a settlement payment as further set forth in this Section.

25 5.2 **Allocation of Payments**. The total settlement amount shall be paid in five (5)  
26 separate checks in the amounts specified below and delivered as set forth below. Any failure by  
27 Settling Defendants to comply with the payment terms herein shall be subject to a stipulated late  
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1 fee to be paid by Settling Defendants to CEH in the amount of \$100 for each day the full payment  
2 is not received after the payment due date set forth in Section 5.1. The late fees required under  
3 this Section shall be recoverable, together with reasonable attorneys' fees, in an enforcement  
4 proceeding brought pursuant to Section 4 of this Consent Judgment. The funds paid by Settling  
5 Defendants shall be allocated as set forth below between the following categories and made  
6 payable as follows:

7 5.2.1 \$84,575 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).

8 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §  
9 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health  
10 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty  
11 payment for \$63,431.25 shall be made payable to OEHHA and associated with taxpayer  
12 identification number 68-0284486. This payment shall be delivered as follows:

13 For United States Postal Service Delivery:

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

19 For Non-United States Postal Service Delivery:

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

25 The CEH portion of the civil penalty payment for \$21,143.75 shall be made payable to the Center  
26 for Environmental Health and associated with taxpayer identification number 94-3251981. This  
27 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
28 94117.

5.2.2 \$63,425 as an Additional Settlement Payment ("ASP") to CEH pursuant to  
Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH

1 intends to restrict use of the ASPs received from this Consent Judgment to the following  
2 purposes: the funds will be placed in CEH's Toxics in Food Fund and used to support CEH  
3 programs and activities that seek to educate the public about acrylamide and other toxic  
4 chemicals in food, to work with the food industry and agriculture interests to reduce exposure to  
5 acrylamide and other toxic chemicals in food, and to thereby reduce the public health impacts and  
6 risks of exposure to acrylamide and other toxic chemicals in food sold in California. CEH shall  
7 obtain and maintain adequate records to document that ASPs are spent on these activities and  
8 CEH agrees to provide such documentation to the Attorney General within thirty (30) days of any  
9 request from the Attorney General. The payment pursuant to this Section shall be made payable  
10 to the Center for Environmental Health and associated with taxpayer identification number 94-  
11 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San  
12 Francisco, CA 94117.

13                   5.2.3     \$437,000 as a reimbursement of a portion of CEH's reasonable attorneys'  
14 fees and costs. The attorneys' fees and cost reimbursement shall be made in two separate checks  
15 as follows: (a) \$409,500 payable to the Lexington Law Group and associated with taxpayer  
16 identification number 94-3317175; and (b) \$27,500 payable to the Center for Environmental  
17 Health and associated with taxpayer identification number 94-3251981. These payments shall be  
18 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

19                   5.2.4     **Additional Contingent Payment for Warning on Veggie Extruded**  
20 **Products.** If Settling Defendants avail themselves of the warning option provided for by Section  
21 3.2 as to Veggie Extruded Products, Settling Defendants shall make an additional payment of  
22 \$150,000 as a civil penalty, concurrently with its written notice as provided in Section 3.2. This  
23 additional civil penalty payment shall be apportioned in accordance with Health & Safety Code §  
24 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health  
25 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty  
26 payment for \$112,500 shall be made payable to OEHHA, associated with taxpayer identification  
27 number 68-0284486, and sent to the OEHHA address set forth in section 5.2.1 above or any  
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1 updated address for OEHHA. The CEH portion of the additional civil penalty payment for  
2 \$37,500 shall be made payable to the Center for Environmental Health and associated with  
3 taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law  
4 Group, 503 Divisadero Street, San Francisco, CA 94117. No additional payment shall be  
5 required for Settling Defendants to avail themselves of the warning option provided for by  
6 Section 3.2 as to Sliced Chips and Non-Veggie Extruded Products.

7 **6. MODIFICATION AND DISPUTE RESOLUTION**

8 6.1 **Modification.** This Consent Judgment may be modified from time to time by  
9 express written agreement of the Parties, with the approval of the Court and prior notice to the  
10 Attorney General’s Office, or by an order of this Court upon motion and prior notice to the  
11 Attorney General’s Office and in accordance with law.

12 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
13 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to  
14 modify the Consent Judgment.

15 6.3 **Court Decision Regarding Similar Products.** If a court of competent  
16 jurisdiction renders a final judgment that one or more products that are Similar to any of the  
17 Covered Products do not require a warning for acrylamide under Proposition 65, where such  
18 products contain levels of acrylamide at or above the Reformulation Levels, then Settling  
19 Defendants may move to modify this Consent Judgment to conform to such ruling with respect to  
20 such portion of the Covered Products as is appropriate.

21 6.4 **Other CEH Settlements.** Settling Defendants may move to modify this Consent  
22 Judgment to substitute a higher Reformulation Level that CEH agrees to in a future consent  
23 judgment applicable to products Similar to any of the Covered Products and CEH agrees not to  
24 oppose any such motion except for good cause shown. Any such modification shall only apply to  
25 Covered Products that are Similar to those products that are subject to a higher Reformulation  
26 Level.

27 6.5 **Other Court Decisions.** If a final decision of a court determines that warnings for  
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1 acrylamide exposures or that enforcement of Proposition 65 claims for acrylamide exposures are  
2 preempted or otherwise unlawful or unconstitutional with respect to products that are Similar to  
3 any of the Covered Products, then Settling Defendants may move to modify this Consent  
4 Judgment to conform to such ruling in order to avoid unfair, inconsistent, or anti-competitive  
5 results.

6           **6.6 Change in Proposition 65.** If Proposition 65 or its implementing regulations  
7 (including but not limited to the “safe harbor no significant risk level” for acrylamide set forth at  
8 Cal. Code Regs., tit. 27, section 25705, subdivision (c)(2) or any “alternative risk level” adopted  
9 by regulation or court decision) are changed from their terms as they exist on the date of entry of  
10 this Consent Judgment in a manner that impacts the Reformulation Levels, or if OEHHA takes  
11 some other final regulatory action for products Similar to the Covered Products in a manner that  
12 impacts the Reformulation Levels or that determines that warnings for acrylamide are not  
13 required for such products, then Settling Defendants may seek to modify this Consent Judgment  
14 to modify the Reformulation Levels. The Parties recognize that the Reformulation Levels are  
15 based on a compromise of a number of issues, and that a change to the “safe harbor no significant  
16 risk level” for acrylamide would not necessarily entitle a Party to a modification of the terms of  
17 this Consent Judgment corresponding in a linear relationship with such a change.

18           **6.7 Scientific Studies.** If an agency of the federal government, including, but not  
19 limited to the U.S. Food and Drug Administration, states through any guidance, regulation, or  
20 other legally binding act, following a review of scientific studies and following public notice and  
21 comment, a cancer potency estimate for acrylamide that equates to a no significant risk level  
22 higher than 0.2 micrograms per day, then Settling Defendants shall be entitled to seek a  
23 modification of this Consent Judgment to be relieved of their obligations to meet any  
24 requirements of this Consent Judgment that are inconsistent with such a change. The Parties  
25 recognize that the Reformulation Levels are based on a compromise of a number of issues, and  
26 that a change to the “no significant risk level” for acrylamide would not necessarily entitle a Party  
27 to a modification of the terms of this Consent Judgment corresponding in a linear relationship  
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1 with such a change.

2           **6.8 Federal Agency Action and Preemption.** If a court of competent jurisdiction or  
3 an agency of the federal government, including, but not limited to the U.S. Food and Drug  
4 Administration, states through any guidance, regulation, or other legally binding act that federal  
5 law has preemptive effect on any of the requirements of this Consent Judgment, then this Consent  
6 Judgment may be modified in accordance with the procedure for noticed motions set forth in  
7 Section 6.1 to bring it into compliance with or avoid conflict with federal law. Any such  
8 modification shall be limited to those changes that are necessary to bring this Consent Judgment  
9 into compliance with or avoid conflict with federal law.

10           **6.9 Warnings From Other Settlements.** To the extent Settling Defendants or their  
11 Subsidiaries elect to warn pursuant to Section 3.2, Settling Defendants may seek to modify this  
12 Consent Judgment to substitute different warning language or methods approved by a court in a  
13 future consent judgment or judgment for exposures to acrylamide in snack food products  
14 (provided Settling Defendants only seek to use such language and methods to a comparable  
15 manner of sale of the Covered Products) (e.g., internet warnings will only be used for internet  
16 sales). If Settling Defendants seek to exercise this option under Section 6.9, they shall provide  
17 notice to CEH, and the Parties shall meet and confer, pursuant to Section 6.2. If the Parties  
18 cannot resolve the dispute informally during such meet and confer, Settling Defendants may file a  
19 motion to modify the Consent Judgment, and the Court shall approve the requested modification  
20 unless it finds that the proposed warning language or method does not comply with Proposition  
21 65.

22           **7. CLAIMS COVERED AND RELEASE**

23           7.1 Provided that Settling Defendants comply in full with their obligations under  
24 Sections 5.1, 5.2, 5.2.1, 5.2.2 and 5.2.3 hereof, this Consent Judgment is a full, final and binding  
25 resolution between CEH on behalf of itself and the public interest and Settling Defendants and  
26 Settling Defendants' direct and indirect parents, subsidiaries (including but not limited to the  
27 Subsidiaries), affiliated entities that are under common ownership, directors, officers, managers,

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1 employees, agents, owners, successors, assigns, licensors, licensees and attorneys (“Defendant  
2 Releasees”), and all entities and persons to which Settling Defendants and any Subsidiaries  
3 directly or indirectly distribute or sell Covered Products, including but not limited to distributors,  
4 wholesalers, customers, franchises, and retailers (including but not limited to Walmart Inc., Wal-  
5 Mart Stores, Inc., Sam’s West, Inc., Jet.com, Walmart.com USA, LLC, Gelson’s Markets, Save  
6 Mart Supermarkets, Sunflower Farmers Markets, LLC, Sprouts Farmers Market, LLC, SF  
7 Markets, LLC, Henry’s Holdings LLC, Target Corporation and their respective affiliates,  
8 subsidiaries, successors and assigns ) (collectively, “Downstream Defendant Releasees”), of any  
9 violation of Proposition 65 based on failure to warn about alleged exposure to acrylamide  
10 contained in Covered Products that were manufactured, distributed, shipped, sold or offered for  
11 sale by Settling Defendants or their Subsidiaries prior to the applicable Compliance Date.

12           7.2 Provided that Settling Defendants comply in full with their obligations under  
13 Sections 5.1, 5.2, 5.2.1, 5.2.2 and 5.2.3 hereof, CEH, for itself, its agents, successors and assigns,  
14 releases, waives, and forever discharges any and all claims against Settling Defendants, the  
15 Subsidiaries, Defendant Releasees, and Downstream Defendant Releasees arising from any and  
16 all violations of Proposition 65 or any other statutory or common law claims that have been or  
17 could have been asserted by CEH individually or in the public interest regarding the failure to  
18 warn about acrylamide allegedly contained in Covered Products manufactured, distributed,  
19 shipped, sold or offered for sale by Settling Defendants or their Subsidiaries prior to the  
20 applicable Compliance Date.

21           7.3 Compliance with the terms of this Consent Judgment by Settling Defendants shall  
22 constitute compliance with Proposition 65 by Settling Defendants, Defendant Releasees and  
23 Downstream Defendant Releasees with respect to any alleged failure to warn about acrylamide in  
24 Covered Products manufactured, distributed, shipped, sold or offered for sale by Settling  
25 Defendants and their Subsidiaries on or after the applicable Compliance Date. As of the  
26 Effective Date, the terms and standards of this Consent Judgment shall supersede the terms and  
27 standards of any prior consent judgment addressing acrylamide exposures under Proposition 65

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1 as to Settling Defendants, Defendant Releasees and Downstream Defendant Releasees solely with  
2 respect to acrylamide in the Covered Products.

3 **8. PROVISION OF NOTICE**

4 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
5 notice shall be sent by first class and electronic mail to:

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

11 8.2 When Settling Defendants are entitled to receive any notice under this Consent  
12 Judgment, the notice shall be sent by first class and electronic mail to:

13 Richard Fama  
14 Cozen O'Connor  
15 45 Broadway Atrium, Suite 1600  
16 New York, NY 10006  
17 rfama@cozen.com

18 Brett N. Taylor  
19 Cozen O'Connor  
20 601 S. Figueroa Street, Suite 3700  
21 Los Angeles, CA 90066  
22 btaylor@cozen.com

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

25 **9. COURT APPROVAL**

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

9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or  
effect and neither the Consent Judgment nor any communication relating to it shall be introduced

1 into evidence or otherwise used in any proceeding for any purpose, other than to allow the Court  
2 to determine if there was a material breach of Section 9.1.

3 **10. DISMISSAL OF CLAIMS**

4 10.1 Within ten (10) calendar days of receiving the initial payments required by Section  
5 5.1 and Section 5.2, CEH shall file dismissals without prejudice of all claims in this action against  
6 Gelson's Markets, Save Mart Supermarkets, Sunflower Farmers Markets, LLC, and Wal-Mart  
7 Stores, Inc., and each of these defendants shall waive all costs in this action. Within ten (10)  
8 calendar days of receiving the initial payments required by Section 5.1 and Section 5.2, CEH shall  
9 file dismissals without prejudice of all claims in the related *CEH v. Snack Innovations, Inc.* action,  
10 Case No. RG17-851470 against Jet.com, Inc. and Target Corporation, and each of these defendants  
11 shall waive all costs in that action.

12 **11. GOVERNING LAW AND CONSTRUCTION**

13 11.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
14 California.

15 **12. APPLICATION OF CONSENT JUDGMENT**

16 12.1 Except as otherwise set forth herein, this Consent Judgment shall apply to and be  
17 binding upon CEH and Settling Defendants and their Subsidiaries, and the respective divisions,  
18 subdivisions, and subsidiaries, and the successors or assigns of any of them.

19 **13. ATTORNEYS' FEES**

20 13.1 A Party who unsuccessfully brings or contests an action, motion, or application  
21 arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable  
22 attorneys' fees and costs.

23 13.2 Nothing in this Section 11 shall preclude a party from seeking an award of  
24 sanctions pursuant to law.

25 **14. ENTIRE AGREEMENT**

26 14.1 This Consent Judgment contains the sole and entire agreement and understanding  
27 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
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1 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
2 and therein. There are no warranties, representations, or other agreements between the Parties  
3 except as expressly set forth herein. No representations, oral or otherwise, express or implied,  
4 other than those specifically referred to in this Consent Judgment have been made by any Party  
5 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,  
6 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically  
7 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the  
8 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,  
9 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
10 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
11 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
12 whether or not similar, nor shall such waiver constitute a continuing waiver.

13 **15. RETENTION OF JURISDICTION**

14 15.1 This Court shall retain jurisdiction of this matter to implement or modify the  
15 Consent Judgment.

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

17 16.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
18 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
19 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

20 **17. OTHER SETTLEMENTS**

21 17.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
22 against any other on terms that are different from those contained in this Consent Judgment.

23 **18. EXECUTION IN COUNTERPARTS**

24 18.1 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.

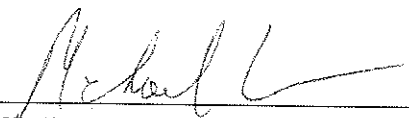
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1 IT IS SO ORDERED, ADJUDGED,  
2 AND DECREED

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4 Dated: 12/3/2019

MICHAEL MARKMAN  
Judge of the Superior Court

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7 IT IS SO STIPULATED:

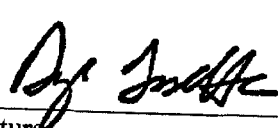
9 Dated: <u>6/12</u> , 2019	10 <b>CENTER FOR ENVIRONMENTAL HEALTH</b> 11  12 Signature 13 <u>Michael Green</u> 14 Printed Name 15 <u>CEO</u> 16 Title
17 18 Dated: _____, 2019	19 <b>UTZ QUALITY FOODS, LLC</b> 20 21 Signature 22 23 Printed Name 24 25 Title

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

3  
4 Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court

6  
7 **IT IS SO STIPULATED:**

9 10 Dated: _____, 2019 11 12 13 14 15 16 17	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>  _____ Signature  _____ Printed Name  _____ Title
18 19 Dated: <u>June 11</u> , 2019 20 21 22 23 24 25 26 27 28	<b>UTZ QUALITY FOODS, LLC</b>   _____ Signature  <u>Dylan Lissette</u> Printed Name  <u>CEO</u> Title



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Dated: June 11, 2019

**SNIKIDDY, LLC**  
Dylan Lissette  
Signature  
Dylan Lissette  
Printed Name  
CEO  
Title

Dated: June 11, 2019

**GOOD HEALTH NATURAL PRODUCTS, LLC**  
Dylan Lissette  
Signature  
Dylan Lissette  
Printed Name  
CEO  
Title

## **EXHIBIT A**

1. Utz Quality Foods, LLC
2. GH Pop Holdings, LLC
3. Heron Holding Corporation
4. Good Health Natural Products, LLC
5. Condor Snack Foods, LLC
6. Snikiddy, LLC
7. Golden Flake Snack Foods, Inc.
8. Rice Investments, L.P.