

ENDORSED  
FILED  
ALAMEDA COUNTY  
APR 18 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. )

SNIKIDDY, LLC, *et al.*, )

Defendants. )

Case No. RG 16-838609

**[PROPOSED] CONSENT JUDGMENT  
AS TO DIEFFENBACH'S POTATO  
CHIPS, INC.**

**1. DEFINITIONS**

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

1.2 "Covered Products" means sliced potato and sweet potato chips ("Covered Products").

1.3 "Effective Date" means the date on which notice of entry of this Consent Judgment is by the Court is served upon Settling Defendants.

1     **2.     INTRODUCTION**

2             2.1     The Parties to this Consent Judgment are the Center for Environmental Health, a  
3     California non-profit corporation (“CEH”), and Dieffenbach’s Potato Chips, Inc. (“Settling  
4     Defendant”). CEH and Settling Defendant (the “Parties”) enter into this Consent Judgment to  
5     settle certain claims asserted by CEH against Settling Defendant as set forth in the Complaint in  
6     the above-captioned matter.

7             2.2     On or about August 26, 2016, CEH provided a 60-day Notice of Violation of  
8     Proposition 65 to the California Attorney General, to the District Attorneys of every county in  
9     California, to the City Attorneys of every California city with a population greater than 750,000,  
10    and to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing  
11    persons to acrylamide contained in fried or baked potato based snack foods without first  
12    providing a clear and reasonable Proposition 65 warning.

13            2.3     Settling Defendant is a corporation or other business entity that manufactures,  
14    distributes, sells, or offers for sale Covered Products that are sold in the State of California or has  
15    done so in the past.

16            2.4     On November 10, 2016, CEH filed the Complaint in the above-captioned matter,  
17    naming Settling Defendant as an original defendant. Upon entry of this Consent Judgment, the  
18    operative Complaint is deemed amended such that the term “Products” as to Settling Defendant  
19    only means Covered Products.

20            2.5     For purposes of this Consent Judgment only, the Parties stipulate that this Court  
21    has jurisdiction over the allegations of violations contained in the Complaint and personal  
22    jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper  
23    in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent  
24    Judgment as a full and final resolution of all claims which were or could have been raised in the  
25    Complaint based on the facts alleged therein with respect to Covered Products manufactured,  
26    distributed, and/or sold by Settling Defendant.

27            2.6     Nothing in this Consent Judgment is or shall be construed as an admission by the  
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Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any other pending or future legal proceedings. This Consent Judgment is the product of negotiation and compromise and is accepted by the Parties solely for purposes of settling, compromising, and resolving issues disputed in this Action.

### **3. INJUNCTIVE RELIEF**

**3.1 Reformulation of Covered Products.** Upon the Effective Date, Settling Defendant shall not purchase, manufacture, ship, sell, or offer for sale Covered Products that will be sold or offered for sale in California that exceed the following acrylamide concentration levels (the “Reformulation Levels”), such concentration to be determined by use of a test performed by an accredited laboratory using either GC/MS (Gas Chromatograph/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), or any other testing method agreed upon by the Parties:

**3.1.1** The average acrylamide concentration shall not exceed 281 parts per billion (“ppb”) by weight (the “Average Level”). The Average Level is determined by randomly selecting and testing at least 1 sample each from 5 different lots of a particular type of Covered Product (or the maximum number of lots available for testing if less than 5) during a testing period of at least 60 days.

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

**3.2 Clear and Reasonable Warnings.** A Covered Product purchased, manufactured, shipped, sold or offered for sale by Settling Defendant may, as an alternative to meeting the reformulation levels set forth in Section 3.1, be sold or offered for sale in California with a Clear and Reasonable Warning that complies with the provisions of this Section 3.2. A Clear and

Reasonable Warning may only be provided for Covered Products that Settling Defendant reasonably believes do not meet the Reformulation Levels. A Clear and Reasonable Warning under this Agreement shall state:

**WARNING:** Consuming this product can expose you to chemicals including acrylamide, which are known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

The word “**WARNING**” shall be displayed in all capital letters and bold print. This warning statement shall be prominently displayed on the Covered Product, on the packaging of the Covered Product, or on a placard or sign provided that the statement is displayed with such conspicuousness, as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary individual prior to sale. If the warning statement is displayed on the Covered Product’s label, it must be set off from other surrounding information and enclosed in a text box. If the warning statement is displayed on a placard or sign where the Covered Product is offered for sale, the warning placard or sign must enable an ordinary individual to easily determine which specific Covered Products the warning applies to, and to differentiate between that Covered Product and other products to which the warning statement does not apply. For internet, catalog or any other sale where the consumer is not physically present, the warning statement shall be displayed in such a manner that it is likely to be read and understood by an ordinary individual prior to the authorization of or actual payment.

#### **4. ENFORCEMENT**

**4.1 General Enforcement Provisions.** CEH may, by motion or application for an order to show cause before this Court, enforce the terms and conditions contained in this Consent Judgment. Any action to enforce alleged violations of Section 3 by Settling Defendant shall be brought exclusively pursuant to this Section 4, and be subject to the meet and confer requirement of Section 4.2.4 if applicable.

1           4.2     **Enforcement of Reformulation Commitment.**

2                   4.2.1     Covered Product Identification. Within 30 days after the Effective Date,  
3     Settling Defendant shall notify CEH of a means sufficient to allow CEH to identify Covered  
4     Products supplied or offered by Settling Defendant for sale on or after that date, for example, a  
5     unique brand name or characteristic system of product numbering or labeling. Settling Defendant  
6     shall provide a copy of the same notice to the Oakland Office of the Attorney General, Attn:  
7     Laura Zuckerman, subject and pursuant to Cal. Evid. Code § 1040. Except as provided for in  
8     Cal. Health & Safety Code § 25249.7(i), the Attorney General shall maintain, and ensure that all  
9     recipients maintain, the submitted information as confidential official information to the full  
10    extent authorized in Section 1040 of the Evidence Code. Upon written request by CEH, but no  
11    more than once in any calendar year, Settling Defendant shall, within 30 days of receiving a  
12    request from CEH, update the information provided to CEH pursuant to this Section 4.2.1 by  
13    notifying CEH of a means sufficient to allow CEH to identify Covered Products currently  
14    supplied or offered for sale by Settling Defendant. If CEH is unable to determine whether a  
15    particular product is a Covered Product as to Settling Defendant based on the information  
16    provided to CEH pursuant to this Section 4.2.1, Settling Defendant shall cooperate in good faith  
17    with CEH in determining whether the product at issue is a Covered Product supplied or offered  
18    for sale by Settling Defendant. Information provided to CEH pursuant to this Section 4.2.1,  
19    including but not limited to the identities of parties to contracts between Settling Defendant and  
20    third parties, may be designated by Settling Defendant as competitively sensitive confidential  
21    business information, and if so designated shall not be disclosed to any person without the written  
22    permission of Settling Defendant. Any motions or pleadings or any other court filings that may  
23    reveal information designated as competitively sensitive confidential business information  
24    pursuant to this Section shall be submitted in accordance with California Rules of Court 8.46 and  
25    2.550, et seq. This provision shall sunset seven years after the Effective Date.

26                   4.2.2     Notice of Violation. In the event that CEH purchases a Covered Product  
27    in California that was manufactured, distributed or sold by Settling Defendant with a best-by or

1 sell-by (or equivalent) date or other code that reflects that the Covered Product was manufactured  
2 on or after the Effective Date, for which CEH has laboratory test results showing that the  
3 Covered Product has an acrylamide level exceeding the Unit Level, and which lacks a Clear and  
4 Reasonable Warning that complies with Section 3.2, CEH may issue a Notice of Violation  
5 pursuant to this Section.

6 4.2.3 Service of Notice of Violation and Supporting Documentation.

7 4.2.3.1 Subject to Section 4.2.2, the Notice of Violation shall be sent to the  
8 person(s) identified in Section 8.2 to receive notices for Settling Defendant, and must be served  
9 within sixty (60) days of the later of the date the Covered Products at issue were purchased or  
10 otherwise acquired by CEH or the date that CEH can reasonably determine that the Covered  
11 Products at issue were manufactured, shipped, sold, or offered for sale by Settling Defendant,  
12 provided, however, that CEH may have up to an additional sixty (60) days to send the Notice of  
13 Violation if, notwithstanding CEH's good faith efforts, the test data required by Section 4.2.3.2  
14 below cannot be obtained by CEH from its laboratory before expiration of the initial sixty (60)  
15 day period.

16 4.2.3.2 The Notice of Violation shall, at a minimum, set forth: (a) the date  
17 the Covered Products were purchased; (b) the location at which the Covered Products were  
18 purchased; (c) a description of the Covered Products giving rise to the alleged violation,  
19 including the name and address of the retail entity from which the sample was obtained and  
20 pictures of the product packaging from all sides, which identifies the product lot; and (d) all test  
21 data obtained by CEH regarding the Covered Products and supporting documentation sufficient  
22 for validation of the test results, including any laboratory reports, quality assurance reports, and  
23 quality control reports associated with testing of the Covered Products.

24 4.2.4 Notice of Election of Response. No more than thirty (30) days after  
25 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to  
26 CEH whether it elects to contest the allegations contained in a Notice of Violation ("Notice of  
27 Election"). Failure to provide a Notice of Election within thirty (30) days of effectuation of  
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1 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.  
2 Upon notice to CEH, Settling Defendant may have up to an additional sixty (60) days to elect if,  
3 notwithstanding Settling Defendant's good faith efforts, Settling Defendant is unable to verify the  
4 test data provided by CEH before expiration of the initial thirty (30) day period.

5 4.2.4.1 If a Notice of Violation is contested, the Notice of Election shall  
6 include all documents upon which Settling Defendant is relying to contest the alleged violation,  
7 including all available test data. If Settling Defendant or CEH later acquires additional test or  
8 other data regarding the alleged violation during the meet and confer period described in Section  
9 4.2.4, it shall notify the other party and promptly provide all such data or information to the party  
10 unless either the Notice of Violation or Notice of Election has been withdrawn.

11 4.2.5 Meet and Confer. If a Notice of Violation is contested, CEH and Settling  
12 Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of  
13 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw  
14 the original Notice of Election contesting the violation and serve a new Notice of Election to not  
15 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay  
16 \$2,500 in addition to any payment required under this Consent Judgment. At any time, CEH may  
17 withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the result shall be  
18 as if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of  
19 Violation results within thirty (30) days of a Notice of Election to contest, CEH may file an  
20 enforcement motion or application pursuant to Section 4.1. In any such proceeding, CEH may  
21 seek whatever fines, costs, penalties, attorneys' fees, or other remedies are provided by law for an  
22 alleged failure to comply with the Consent Judgment.

23 4.2.6 Non-Contested Notices. If Settling Defendant elects to not contest the  
24 allegations in a Notice of Violation, it shall undertake corrective action(s) and make payments, if  
25 any, as set forth below.

26 4.2.6.1 Settling Defendant shall include in its Notice of Election a detailed  
27 description with supporting documentation of the corrective action(s) that it has undertaken or  
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1 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,  
2 provide reasonable assurance that all Covered Products having the same lot number as that of the  
3 Covered Product identified in CEH's Notice of Violation (the "Noticed Covered Products") will  
4 not be thereafter sold in California or offered for sale to California customers by Settling  
5 Defendant and that Settling Defendant has sent instructions to any retailers or customers that offer  
6 the Noticed Covered Products for sale to cease offering the Noticed Covered Products for sale to  
7 California consumers and to return all such Noticed Covered Products to Settling Defendant if  
8 Settling Defendant has reason to believe the Noticed Covered Products are still offered for sale to  
9 California consumers. Settling Defendant shall keep for a period of one year and make available  
10 to CEH upon reasonable notice (which shall not exceed more than one request per year) for  
11 inspection and copying records of any correspondence regarding the foregoing. If there is a  
12 dispute over the corrective action, Settling Defendant and CEH shall meet and confer before  
13 seeking any remedy in court. In no case shall CEH issue more than one Notice of Violation per  
14 manufacturing lot of a type of Covered Product, nor shall CEH issue more than two Notices of  
15 Violation in the first calendar year following the Effective Date.

16                   4.2.6.2     If the Notice of Violation is the first, second, third, or fourth Notice  
17 of Violation received by Settling Defendant under Section 4.2.2 that was not successfully  
18 contested or withdrawn, then Settling Defendant shall pay \$15,000 for each Notice of Violation.  
19 If Settling Defendant has received more than four (4) Notices of Violation under Section 4.2.2  
20 that were not successfully contested or withdrawn, then Settling Defendant shall pay \$25,000 for  
21 each Notice of Violation. If Settling Defendant produces with its Notice of Election test data for  
22 the Covered Product that: (i) was conducted prior to the date CEH gave Notice of Violation;  
23 (ii) was conducted on the same or same type of Covered Product; and (iii) demonstrates  
24 acrylamide levels below Reformulation Level, then any payment under this Section shall be  
25 reduced by 100 percent (100%) for the first Notice of Violation, by seventy-five percent (75%)  
26 for the second Notice of Violation, and by fifty percent (50%) for any subsequent Notice of  
27 Violation. In no case shall Settling Defendant be obligated to pay more than \$100,000 for  
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1 uncontested Notices of Violation in any calendar year irrespective of the total number of Notices  
2 of Violation issued.

3 4.2.7 Payments. Any payments under Section 4.2 shall be made by check  
4 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a  
5 Notice of Election triggering a payment and shall be used as reimbursement for costs for  
6 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse  
7 attorneys’ fees and costs incurred in connection with these activities.

8 4.3 **Repeat Violations.** If Settling Defendant has received four (4) or more Notices of  
9 Violation concerning the same type of Covered Product that were not successfully contested or  
10 withdrawn in any two (2) year period then, at CEH’s option, CEH may seek whatever fines,  
11 costs, penalties, attorneys’ fees, or other remedies that are provided by law for failure to comply  
12 with the Consent Judgment. Prior to seeking such relief, CEH shall meet and confer with Settling  
13 Defendant for at least thirty (30) days to determine if Settling Defendant and CEH can agree on  
14 measures that Settling Defendant can undertake to prevent future alleged violations.

## 15 **5. PAYMENTS**

16 5.1 **Payments by Settling Defendant.** Within ten (10) calendar days of the Effective  
17 Date, Settling Defendant shall pay the total sum of \$140,000 as a settlement payment as further  
18 set forth in this Section.

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 below 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 4.1.  
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 3 of this Consent Judgment. The  
26 funds paid by Settling Defendant shall be allocated as set forth below between the following  
27 categories and made payable as follows:

1                   5.2.1   \$18,915 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).  
2   The civil penalty payment shall be apportioned in accordance with Health & Safety Code §  
3   25249.12 (25% to CEH and 75% to the State of California’s Office of Environmental Health  
4   Hazard Assessment (“OEHHA”)). Accordingly, the OEHHA portion of the civil penalty  
5   payment for \$14,186.25 shall be made payable to OEHHA and associated with taxpayer  
6   identification number 68-0284486. This 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 for \$4,728.75 shall be made  
16   payable to the Center for Environmental Health and associated with taxpayer identification  
17   number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero  
18   Street, San Francisco, CA 94117.

19                   5.2.2   \$14,185 as an Additional Settlement Payment (“ASP”) to CEH pursuant  
20   to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204.  
21   CEH intends to restrict use of the ASPs received from the Consent Judgment before the Court to  
22   the following purposes: the funds will be placed in CEH’s Toxics in Food Fund and used to  
23   support CEH programs and activities that seek to educate the public about acrylamide and other  
24   toxic chemicals in food, to work with the food industry and agriculture interests to reduce  
25   exposure to acrylamide and other toxic chemicals in food, and to thereby reduce the public health  
26   impacts and risks of exposure to acrylamide and other toxic chemicals in food sold in California.  
27   CEH shall obtain and maintain adequate records to document that ASPs are spent on these

activities and CEH agrees to provide such documentation to the Attorney General within thirty days of any request from the Attorney General. The payment pursuant to this Section shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.3 \$106,900 as a reimbursement of a portion of CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made in two separate checks as follows: (a) \$90,265 payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b) \$16,635 payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. These payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

## **6. MODIFICATION AND DISPUTE RESOLUTION**

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

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

## **7. CLAIMS COVERED AND RELEASE**

7.1 Provided that Settling Defendant complies in full with its obligations under Section 5 hereof, this Consent Judgment is a full, final, and binding resolution between CEH on behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, shareholders, attorneys, and the predecessors, successors, and assigns of each of them ("Defendant Releasees"), and all entities to which Settling Defendant directly or indirectly distributes or sells Covered Products, including but not limited to distributors, wholesalers,

1 customers, retailers, franchisees, licensors, and licensees (“Downstream Defendant Releasees”),  
2 of any violation of Proposition 65 based on failure to warn about alleged exposure to acrylamide  
3 contained in Covered Products that were sold, distributed, or offered for sale by Settling  
4 Defendant prior to the Effective Date.

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

13 7.3 Provided that Settling Defendant complies in full with its obligations under  
14 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant  
15 shall constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and  
16 Downstream Defendant Releasees with respect to any alleged failure to warn about acrylamide in  
17 Covered Products manufactured, distributed or sold by Settling Defendant after the Effective  
18 Date.

19 **8. PROVISION OF NOTICE**

20 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
21 notice shall be sent by first class and electronic mail to:

22 Howard Hirsch  
23 Lexington Law Group  
24 503 Divisadero Street  
25 San Francisco, CA 94117  
26 hhirsch@lexlawgroup.com

27 8.2 When Settling Defendant is entitled to receive any notice under this Consent  
28 Judgment, the notice shall be sent by first class and electronic mail to:

Mike Marlowe  
Chief Operating Officer  
Dieffenbach's Potato Chips, Inc.  
51 Host Road  
Womelsdorf, PA 19567  
mmarlowe@dieffenbachs.com

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

## **9. COURT APPROVAL**

9.1 This Consent Judgment shall become effective upon the date signed by CEH and Settling Defendant, whichever is later, provided however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant 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 shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

## **10. GOVERNING LAW AND CONSTRUCTION**

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

## **11. ATTORNEYS' FEES**

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

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

## **12. ENTIRE AGREEMENT**

12.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein

1 and therein. There are no warranties, representations, or other agreements between the Parties  
2 except as expressly set forth herein. No representations, oral or otherwise, express or implied,  
3 other than those specifically referred to in this Consent Judgment have been made by any Party  
4 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,  
5 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically  
6 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the  
7 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,  
8 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
9 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
10 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
11 whether or not similar, nor shall such waiver constitute a continuing waiver.

### 12 **13. RETENTION OF JURISDICTION**

13 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
14 Consent Judgment.

### 15 **14. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

16 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
17 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
18 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

### 19 **15. NO EFFECT ON OTHER SETTLEMENTS**

20 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
21 against an entity that is not Settling Defendant on terms that are different than those contained in  
22 this Consent Judgment. Settling Defendant may move to modify this Consent Judgment pursuant  
23 to Section 6 to substitute higher Reformulation Levels that CEH agrees to in a future consent  
24 judgment applicable to products identical to the Covered Products, and CEH agrees not to oppose  
25 any such motion except for good cause shown.  
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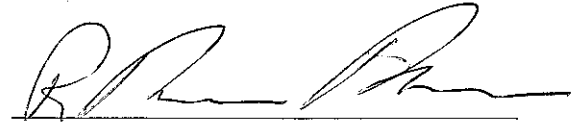
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1 Dated: 12/15, 2017

**DIEFFENBACH'S POTATO CHIPS, INC.**

2  
3  
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Signature

5  
6 R. Michael Marbone

Printed Name

7  
8 COO

Title