

SEP 12 2018
CLERK OF THE SUPERIOR COURT
By PAM WILLIAMS
Deputy

CENTER FOR ENVIRONMENTAL HEALTH,) Case No. RG 17-851469
)
Plaintiff,) ~~PROPOSED~~ **CONSENT JUDGMENT**
) **AS TO KETTLE FOODS, INC. AND**
v.) **LATE JULY SNACKS LLC**
)
FOODSHOULDTASTEGOOD, INC., *et al.*,)
)
Defendants.)
)
)
)
)

1.2 “Covered Products” means fried or baked potato or sweet potato based snack foods, including but not limited to fried or baked potato or sweet potato based chips, fried or baked potato or sweet potato based sticks, and fried or baked potato or sweet potato based straws but not including sliced potato chips, under the Kettle Foods, Inc. (“Kettle”) brand and Late July

1 Snacks LLC (“Late July”) brand. It is the Parties’ intent that the Covered Products referenced in
2 this Consent Judgment are a subset of the kind of products falling within Type 4 in the “extruded,
3 pellet, and baked products” category in the Consent Judgment as to Defendant Snak King
4 Corporation, entered August 31, 2011, in *People v. Snyder’s of Hanover, et al.*, Alameda County
5 Superior Court Case No. RG 09-455286.¹ An initial list of the Covered Products is attached as
6 Exhibit A hereto.

7 1.3 “Effective Date” means the 30th day following the date on which notice of entry
8 of this Consent Judgment by the Court is served upon Settling Defendants.

9 2. INTRODUCTION

10 2.1 The Parties to this Consent Judgment are the Center for Environmental Health, a
11 California non-profit corporation (“CEH”), on the one hand, and Kettle and Late July
12 (collectively, “Settling Defendants”), on the other hand. CEH and Settling Defendants (the
13 “Parties”) enter into this Consent Judgment to settle all claims asserted by CEH against Settling
14 Defendants as set forth in the Complaint in the above-captioned matter and all Claims described
15 in Section 7 of this Consent Judgment.

16 2.2 On or about August 26, 2016, CEH provided a 60-day Notice of Violation of
17 Proposition 65 to the California Attorney General, to the District Attorneys of every county in
18 California, to the City Attorneys of every California city with a population greater than 750,000,
19 and to Kettle, alleging that Kettle violated Proposition 65 by exposing persons to acrylamide
20 contained in Covered Products without first providing a clear and reasonable Proposition 65
21 warning. On or about September 30, 2016, CEH provided a 60-day Notice of Violation of
22 Proposition 65 to Late July and the same public enforcers alleging that Late July violated
23 Proposition 65 by exposing persons to acrylamide contained in Covered Products without first
24 providing a clear and reasonable Proposition 65 warning.

25 2.3 Each Settling Defendant is a corporation or other business entity that
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27 ¹ These products are referred to as “Group C, Type 4” products in Exhibit A to the Snak King Consent Judgment,
28 which is available on the Attorney General’s website at <https://oag.ca.gov/prop65/litigation>.

1 manufactures, distributes, sells, or offers for sale Covered Products that are sold in the State of
2 California or has done so in the past.

3 2.4 On March 2, 2017, CEH filed the original complaint in the above-captioned
4 matter, naming Settling Defendants as defendants. On May 23, 2017, CEH filed the Complaint.

5 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
6 has jurisdiction over the allegations of violations contained in the operative Complaint and
7 personal jurisdiction over Settling Defendants as to the acts alleged in the operative Complaint,
8 that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and
9 enforce this Consent Judgment as a full and final resolution of all claims which were or could
10 have been raised in the operative Complaint based on the facts alleged therein with respect to
11 Covered Products.

12 2.6 Nothing in this Consent Judgment is or shall be construed as an admission by the
13 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with
14 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
15 conclusion of law, issue of law, or violation of law, except as otherwise provided herein. Nothing
16 in this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or
17 defense the Parties may have in any other pending or future legal proceedings, except as
18 otherwise provided herein. This Consent Judgment is the product of negotiation and compromise
19 and is accepted by the Parties solely for purposes of settling, compromising, and resolving issues
20 disputed in this Action, except as otherwise provided herein.

21 **3. INJUNCTIVE RELIEF**

22 3.1 **Reformulation of Covered Products.** Upon the Effective Date, with the
23 exception of Kettle's Covered Products with a Clear and Reasonable Warning that complies with
24 the provisions of Section 3.2, Settling Defendants shall not purchase, manufacture, ship, sell, or
25 offer for sale Covered Products that will be sold or offered for sale in California that exceed the
26 following acrylamide concentration levels, such concentration to be determined by use of a test
27 performed by an accredited laboratory using either GC/MS (Gas Chromatograph/Mass

1 Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), or any other testing
2 method agreed upon by the Parties:

3 3.1.1 With the exception of Kettle's Covered Products with a Clear and
4 Reasonable Warning that complies with the provisions of Section 3.2, the average acrylamide
5 concentration shall not exceed 350 parts per billion ("ppb") by weight (the "Average Level").
6 The Average Level is determined by randomly selecting and testing at least 1 sample each from
7 at least 5 and up to 10 different lots of a particular type of Covered Product (or the maximum
8 number of lots available for testing if less than 5) during a testing period of at least 120 days.

9 3.1.2 With the exception of Kettle's Covered Products with a Clear and
10 Reasonable Warning that complies with the provisions of Section 3.2, the acrylamide
11 concentration of any individual unit of a Covered Product shall not exceed 490 ppb by weight,
12 based on a representative composite sample taken from the individual unit being tested (the "Unit
13 Level"). For avoidance of doubt, Covered Products purchased, manufactured, distributed,
14 shipped, or sold prior to the Effective Date are not subject to the injunctive relief requirements of
15 Section 3 hereof, even if such products are sold in California or to California consumers after the
16 Effective Date.

17 3.2 **Clear and Reasonable Warnings – Kettle Only.** A Covered Product purchased,
18 manufactured, distributed, shipped, sold or offered for sale by Kettle after the Effective Date
19 may, as an alternative to meeting the Reformulation Levels set forth in Section 3.1, be sold or
20 offered for sale in California with a Clear and Reasonable Warning that complies with the
21 provisions of this Section 3.2. A Clear and Reasonable Warning may only be provided for
22 Covered Products that Kettle reasonably believes do not meet the Reformulation Levels. A Clear
23 and Reasonable Warning under this Agreement shall state:

24 **WARNING:** Consuming this product can expose you to acrylamide, which is known to
25 the State of California to cause cancer. For more information go to
26 www.P65Warnings.ca.gov/food.

27 **or**

WARNING: Consuming this product can expose you to chemicals including acrylamide and [additional chemicals], which are known to the State of California to cause cancer.

For more information go to 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 a 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 to render it so that it is likely to be read and understood by an ordinary individual prior to the authorization of or actual payment. The warning that appears on the label attached as Exhibit B is an example of a Clear and Reasonable Warning.

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 3.1 or Section 3.2 by Settling Defendants 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.

4.2 Enforcement of Reformulation Commitment.

4.2.1 Notice of Violation. In the event that CEH purchases a Covered Product in California that was purchased, manufactured, distributed, shipped, sold, or offered for sale by a

1 Settling Defendant and that has a best-by or sell-by (or equivalent) date more than 6 months after
2 the Effective Date, and for which CEH has laboratory test results showing that the Covered
3 Product exceeds the Unit Level (and, for Kettle Covered Products, lacks a Clear and Reasonable
4 Warning), CEH may issue a Notice of Violation pursuant to this Section to that Settling
5 Defendant (the "Noticed Settling Defendant").

6 4.2.2 Service of Notice of Violation and Supporting Documentation.

7 4.2.2.1 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 the Noticed Settling Defendant, and must
9 be served within sixty (60) days of the later of the date the Covered Products at issue were
10 purchased or otherwise acquired by CEH or the date that CEH can reasonably determine that the
11 Covered Products at issue were manufactured, distributed, shipped, sold, or offered for sale by
12 the Noticed Settling Defendant, provided, however, that CEH may have up to an additional sixty
13 (60) days to send the Notice of Violation if, notwithstanding CEH's good faith efforts, the test
14 data required by Section 4.2.2.2 below cannot be obtained by CEH from its laboratory before
15 expiration of the initial sixty (60) day period.

16 4.2.2.2 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 the best-by
21 and sell-by (or equivalent) date or other similar code; and (d) all test data obtained by CEH
22 regarding the Covered Products and supporting documentation sufficient for validation of the test
23 results, including any laboratory reports, quality assurance reports, and quality control reports
24 associated with testing of the Covered Products.

25 4.2.3 Notice of Election of Response. No more than sixty (60) days after
26 effectuation of service of a Notice of Violation, the Noticed Settling Defendant shall provide
27 written notice to CEH whether it elects to contest the allegations contained in a Notice of
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1 Violation ("Notice of Election"). Failure to provide a Notice of Election within sixty (60) days of
2 effectuation of service of a Notice of Violation shall be deemed an election to contest the Notice
3 of Violation. Upon notice to CEH, the Noticed Settling Defendant may have up to an additional
4 sixty (60) days to elect if, notwithstanding Settling Defendants' good faith efforts, the Noticed
5 Settling Defendant is unable to verify the test data provided by CEH before expiration of the
6 initial sixty (60) day period.

7 4.2.3.1 If a Notice of Violation is contested, the Notice of Election shall
8 include all documents upon which the Noticed Settling Defendant is relying to contest the alleged
9 violation, including all available test data. If the Noticed Settling Defendant or CEH later acquire
10 additional test or other data regarding the alleged violation during the meet and confer period
11 described in Section 4.2.4, it shall notify the other Party and promptly provide all such data or
12 information to the Party unless either the Notice of Violation or Notice of Election has been
13 withdrawn.

14 4.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and the
15 Noticed Settling Defendant shall meet and confer to attempt to resolve their dispute. Within
16 thirty (30) days of serving a Notice of Election contesting a Notice of Violation, the Noticed
17 Settling Defendant may withdraw the original Notice of Election contesting the violation and
18 serve a new Notice of Election to not contest the violation, provided, however, that, in this
19 circumstance, the Noticed Settling Defendant shall pay \$2,500 in addition to any payment
20 required under this Consent Judgment. At any time, CEH may withdraw a Notice of Violation, in
21 which case for purposes of this Section 4.2 the result shall be as if CEH never issued any such
22 Notice of Violation. In the event CEH withdraws a Notice of Violation pursuant to the preceding
23 sentence, it shall return any payments made by Settling Defendants in connection with that
24 Notice. If no informal resolution of a Notice of Violation results within thirty (30) days of a
25 Notice of Election to contest, CEH may file an enforcement motion or application pursuant to
26 Section 4.1 regarding any alleged violation of Section 3. In any such proceeding, CEH may seek
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1 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 4.2.5 Non-Contested Notices. If the Noticed Settling Defendant elects to not
4 contest the allegations in a Notice of Violation, it shall undertake corrective action(s) and make
5 payments, if any, as set forth below.

6 4.2.5.1 The Noticed Settling Defendant shall include in its Notice of
7 Election a detailed description with supporting documentation of the corrective action(s) that it
8 has undertaken or propose to undertake to address the alleged violation. Any such correction
9 shall, at a minimum, provide reasonable assurance that, with the exception of Kettle Covered
10 Products with a Clear and Reasonable Warning that complies with the provisions of Section 3.2,
11 all Covered Products having the same lot number as that of the Covered Product identified in
12 CEH's Notice of Violation (the "Noticed Covered Products") will not be thereafter sold in
13 California or offered for sale to California customers by the Noticed Settling Defendant, and that
14 the Noticed Settling Defendant has sent instructions to any retailers or customers that offer the
15 Noticed Covered Products for sale to cease offering the Noticed Covered Products for sale to
16 California consumers and to either return all such Noticed Covered Products to the Noticed
17 Settling Defendant, or to directly destroy such Noticed Covered Products, if the Noticed Settling
18 Defendant has reason to believe the Noticed Covered Products are still offered for sale to
19 California consumers. The Noticed Settling Defendant shall keep for a period of one year and
20 make available to CEH upon reasonable notice (which shall not exceed more than one request per
21 year) for inspection and copying records of any correspondence regarding the foregoing.

22 4.2.5.2 If the Notice of Violation is based on a violation of the Unit Level
23 with respect to a single Covered Product, a Settling Defendant may be excused from the recall
24 obligation described in Section 4.2.5.1 (but not the monetary payments, if any, required by this
25 Section 4) if the Settling Defendant produces test results and other evidence that: (1)
26 demonstrates that the acrylamide levels found by CEH in the unit alleged to be in violation is an
27 aberration; and (2) otherwise provides reasonable assurance that the remainder of the Noticed

1 Covered Products, aside from the unit alleged to be in violation, comply with the Reformulation
2 Levels. The Parties agree that this Section 4.2.5.2 is satisfied if the Settling Defendant can
3 demonstrate that the type of Covered Product at issue in the Notice of Violation satisfies the
4 Average Level. However, to avail itself of this provision, the Settling Defendant must provide
5 CEH with all acrylamide test data in its possession, custody or control pertaining to the type of
6 Covered Product at issue in the Notice of Violation that was performed within the year prior to
7 the date of the Notice of Violation.

8 4.2.5.3 If there is a dispute over the corrective action or over whether the
9 Noticed Settling Defendant is excused from the recall obligation, the Noticed Settling Defendant
10 and CEH shall meet and confer before seeking any remedy in court. In no case shall CEH issue
11 more than one Notice of Violation per manufacturing lot of a type of Covered Product, nor shall
12 CEH issue more than two Notices of Violation in the first year following the Effective Date.

13 4.2.5.4 If the Notice of Violation is the first, second, third, or fourth Notice
14 of Violation received by the Noticed Settling Defendant under Section 4.2.1 that was not
15 successfully contested or withdrawn, then the Noticed Settling Defendant shall pay \$15,000 for
16 each Notice of Violation. If the Noticed Settling Defendant has received more than four (4)
17 Notices of Violation under Section 4.2.1 that were not successfully contested or withdrawn, then
18 the Noticed Settling Defendant shall pay \$25,000 for each Notice of Violation. If the Noticed
19 Settling Defendant produces with its Notice of Election test data for the Covered Product that:
20 (i) was conducted prior to the date CEH gave Notice of Violation; (ii) was conducted on the same
21 or same type of Covered Product; and (iii) demonstrates acrylamide levels below the Unit Level,
22 then any payment under this Section shall be reduced by 100 percent (100%) for the first Notice
23 of Violation, by seventy-five percent (75%) for the second Notice of Violation, and by fifty
24 percent (50%) for any subsequent Notice of Violation. The Noticed Settling Entity can
25 successfully contest a Notice of Violation if it produced with a Notice of Election a copy of
26 correspondence dated before the date of the purchase that resulted in the Notice of Violation, to a
27 person or entity that caused that Covered Product to be sold in California, instructing that person

1 or entity to cease offering the Noticed Covered Products for sale in California. In no case shall
2 the Noticed Settling Defendant be obligated to pay more than \$100,000 for all Notices of
3 Violation not successfully contested or withdrawn in any calendar year irrespective of the total
4 number of Notices of Violation issued.

5 4.2.6 Payments. Any payments under Section 4.2 shall be made by check
6 payable to the "Lexington Law Group" and shall be paid within thirty (30) days of service of a
7 Notice of Election triggering a payment and shall be used as reimbursement for costs for
8 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse
9 attorneys' fees and costs incurred in connection with these activities.

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

18 5. **PAYMENTS**

19 5.1 **Payments by Settling Defendants.** Within twenty (20) calendar days of the date
20 on which notice of entry of this Consent Judgment by the Court is served upon Settling
21 Defendants, Settling Defendants shall pay the total sum of \$165,000 as a settlement payment as
22 further set forth in this Section.

23 5.2 **Allocation of Payments.** The total settlement amount for Settling Defendants
24 shall be paid in five (5) separate checks in the amounts specified below and delivered as set forth
25 below. Any failure by Settling Defendants to comply with the payment terms herein shall be
26 subject to a stipulated late fee to be paid by Settling Defendants to CEH in the amount of \$100
27 for each day the full payment is not received after the payment due date set forth in Section 5.1.

1 The late fees required under this Section shall be recoverable, together with reasonable attorneys'
2 fees, in an enforcement proceeding brought pursuant to Section 4 of this Consent Judgment. The
3 funds paid by Settling Defendants shall be allocated as set forth below between the following
4 categories and made payable as follows:

5 5.2.1 \$28,875 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).

6 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §
7 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
8 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
9 payment for \$21,656.25 shall be made payable to OEHHA and associated with taxpayer
10 identification number 68-0284486. This payment shall be delivered as follows:

11 For United States Postal Service Delivery:

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

17 For Non-United States Postal Service Delivery:

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

23 The CEH portion of the civil penalty payment for \$7,218.75 shall be made
24 payable to the Center for Environmental Health and associated with taxpayer identification
25 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
26 Street, San Francisco, CA 94117.

27 5.2.2 \$21,655 as an Additional Settlement Payment ("ASP") to CEH pursuant to
28 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH
intends to restrict use of the ASPs received from this Consent Judgment to the following
purposes: the funds will be placed in CEH's Toxics in Food Fund and used to support CEH

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

11 5.2.3 \$114,470 as a reimbursement of a portion of CEH's reasonable attorneys'
12 fees and costs. The attorneys' fees and cost reimbursement shall be made payable to the
13 Lexington Law Group and associated with taxpayer identification number 94-3317175. This
14 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
15 94117.

16 **6. MODIFICATION AND DISPUTE RESOLUTION**

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

21 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
22 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
23 modify the Consent Judgment.

24 **7. CLAIMS COVERED AND RELEASE**

25 7.1 Provided that Settling Defendants comply in full with their obligations under
26 Section 5 hereof, this Consent Judgment is a full, final and binding resolution between CEH on
27 behalf of itself and its successors and assigns and in the public interest, and Settling Defendants

1 and their parents, subsidiaries, affiliated entities that are under common ownership, directors,
2 officers, employees, agents, shareholders, successors, assigns, and attorneys ("Defendant
3 Releasees"), and all entities to which either Settling Defendant directly or indirectly distributes or
4 sells Covered Products, including but not limited to distributors, wholesalers, customers, retailers
5 (including, but not limited to, Save Mart Supermarkets and SF Markets, LLC), franchisees,
6 licensors, and licensees ("Downstream Defendant Releasees"), of any violation of Proposition 65
7 based on failure to warn about alleged exposure to acrylamide contained in Covered Products that
8 were purchased, manufactured, distributed, shipped, or sold prior to the Effective Date, even if
9 such products are sold in California or to California consumers after the Effective Date.

10 7.2 Provided that Settling Defendants comply in full with their obligations under
11 Section 5 hereof, CEH, for itself, its agents, successors and assigns, releases, waives, and forever
12 discharges any and all claims against Settling Defendants, Defendant Releasees, and Downstream
13 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
14 common law claims that have been or could have been asserted by CEH individually or in the
15 public interest regarding the failure to warn about exposure to acrylamide arising in connection
16 with Covered Products purchased, manufactured, distributed, shipped, or sold prior to the
17 Effective Date, even if such products are sold in California or to California consumers after the
18 Effective Date.

19 7.3 Provided that Settling Defendants comply in full with their obligations under
20 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendants
21 shall constitute compliance with Proposition 65 by Settling Defendants, Defendant Releasees and
22 Downstream Defendant Releasees with respect to any alleged failure to warn about acrylamide in
23 Covered Products purchased, manufactured, distributed, shipped, sold, or offered for sale after
24 the Effective Date.

25 7.4 Provided that Settling Defendants comply in full with their obligations under
26 Section 5 hereof, entry of this Consent Judgment will resolve all claims alleged against Settling
27 Defendants, Save Mart Supermarkets, and SF Markets, LLC in the operative Complaint related to
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1 Covered Products purchased, manufactured, distributed, shipped, sold, or offered for sale by
2 Settling Defendants, Save Mart Supermarkets, or SF Markets, LLC. For sake of clarity, no
3 obligations in this Consent Judgment shall apply to Save Mart Supermarkets or SF Markets, LLC.

4 7.5 With respect to the foregoing waivers and releases in this Section, CEH on its own
5 behalf hereby specifically waives any and all rights and benefits which it now has, or in the future
6 may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code,
7 which provides as follows:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
9 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
10 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
11 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED
THIS SETTLEMENT WITH THE DEBTOR.

12 **8. PROVISION OF NOTICE**

13 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
14 notice shall be sent by first class and electronic mail to:

15 Howard Hirsch
16 Lexington Law Group
17 503 Divisadero Street
San Francisco, CA 94117
hhirsch@lexlawgroup.com

18 8.2 When Settling Defendants are entitled to receive any notice under this Consent
19 Judgment, the notice shall be sent by first class and electronic mail to:

20 Sean D. Meenan
21 Winston and Strawn LLP
22 101 California Street, 35th Floor
San Francisco, CA 94111-5840
SMeenan@winston.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.

1 **9. COURT APPROVAL**

2 9.1 This Consent Judgment shall become effective upon the date signed by CEH and
3 Settling Defendants, whichever is later, provided however, that CEH shall prepare and file a
4 Motion for Approval of this Consent Judgment and Settling Defendants shall support entry of this
5 Consent Judgment by the Court.

6 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
7 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
8 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

9 **10. GOVERNING LAW AND CONSTRUCTION**

10 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
11 California.

12 **11. ATTORNEYS' FEES**

13 11.1 A Party who unsuccessfully brings or contests an action, motion, or application
14 arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable
15 attorneys' fees and costs.

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

18 **12. ENTIRE AGREEMENT**

19 12.1 This Consent Judgment contains the sole and entire agreement and understanding
20 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
21 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
22 and therein. There are no warranties, representations, or other agreements between the Parties
23 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
24 other than those specifically referred to in this Consent Judgment have been made by any Party
25 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
26 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
27 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the

Parties hereto only to the extent that they are expressly incorporated herein. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

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 a Settling Defendant on terms that are different than those contained in this Consent Judgment. A Settling Defendant may move to modify this Consent Judgment pursuant to Section 6 to substitute higher acrylamide reformulation levels that CEH agrees to in a future settlement or consent judgment applicable to products substantially identical to the Covered Products, and CEH agrees not to oppose any such motion except for good cause shown.

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: 9/12/18

IOANA PETROU

Judge of the Superior Court

1 **IT IS SO STIPULATED:**

3 Dated: <u>15 JUNE</u> , 2018	CENTER FOR ENVIRONMENTAL HEALTH  Signature <u>Charles Pizzaro</u> Printed Name <u>ASSOCIATE DIRECTOR</u> Title
11 Dated: _____, 2018	KETTLE FOODS, INC. Signature Printed Name Title
20 Dated: _____, 2018	LATE JULY SNACKS LLC Signature Printed Name Title

1 **IT IS SO STIPULATED:**

Dated: _____, 2018	CENTER FOR ENVIRONMENTAL HEALTH _____ Signature _____ Printed Name _____ Title
Dated: <u>June 7</u> , 2018	KETTLE FOODS, INC. _____ Signature <u>Jade Cobb Murray</u> Printed Name <u>Chief Counsel & Asst Secretary</u> Title
Dated: <u>June 7</u> , 2018	LATE JULY SNACKS LLC _____ Signature <u>Jade Cobb Murray</u> Printed Name <u>Chief Counsel & Asst Secretary</u> Title

EXHIBIT A

Description	Size	SKU
Kettle Uprooted Real Vegetable Chips - Sweet Potatoes, Beets & Parsnips with Sea Salt	6 oz.	0-84114-11492-1
Kettle Uprooted Real Vegetable Chips - Sweet Potatoes with Sea Salt	6 oz.	0-84114-11493-1
Kettle Uprooted Sweet Potato Maple	23 oz.	0-84114-90005-1
Kettle Uprooted Sweet Potato Pie Chips	6 oz.	0-84114-90002-9
Kettle Sweet Potato Pie Chips	23 oz.	0-84114-90065-4
Kettle Uprooted Real Vegetable Chips - Chipotle Honey Sweet Potatoes	6 oz.	0-84114-90001-2
Late July Snacks How Sweet Potato It Is Multigrain Tortilla Chips	5.5 oz.	8-90444-00087-8

EXHIBIT B

BEST BEFORE:

KENIE[®] UPROOTED[™]

REAL VEGETABLE CHIPS

Certified



Gluten-Free



SWEET POTATO PIE

— SWEET POTATOES —

great taste...naturally[™]

NET WT 6 OZ (170g)

1700
PARVE

KETTLE[®] UPROOTED[™]

REAL VEGETABLE CHIPS

We're branching out at Kettle Brand with a delicious new chip made from thickly sliced sweet potatoes grown by our farmers in the Midwest. Dig in!

— OUR FARMERS —

"At our farm, one of the things we love most to grow is sweet potatoes. There's something about the way they're hidden beneath the surface just waiting to be unearthed at harvest.

You put good stuff into the soil and in return gather up a bounty of flavorful sweet potatoes. It's a miracle every time.

We really appreciate how much the people at Kettle Brand value the care we put into growing flavorful food. And darn it if they don't have a knack for turning it into something even more delicious."

Mark Bula

Shawn Bula

Mark Bula and Shawn Bula
Bula Gieringer Farms
Kettle Partner since 2007

GUARANTEED FRESH AND DELICIOUS through the 'Best Before' date. Please note this date and the UPC code in all correspondence regarding this product.

Trademarks of Kettle Foods, Inc. include the KETTLE brand name, the KETTLE design, and related KETTLE marks.
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SWEET POTATO PIE

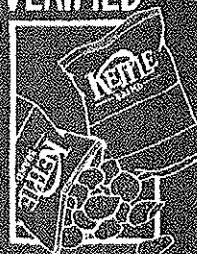
OUR *Natural* PROMISE

NON-GMO PROJECT VERIFIED

GLUTEN FREE

NO PRESERVATIVES

0 GRAMS ^{TRANS}FAT



INGREDIENTS: Sweet potatoes, safflower and/or sunflower and/or canola oil, sugar, dried cane syrup, salt, maple sugar, maltodextrin, spice, brown sugar, natural flavors, sea salt, dried molasses.

Nutrition Facts

Serving Size 1oz about 13 chips (28g)

Servings Per Container: 6

Amount Per Serving

Calories 150 Calories from Fat 90

% Daily Value*

Total Fat 10g 15%

Saturated Fat 0.5g 3%

Trans Fat 0g

Polyunsaturated Fat 1g

Monounsaturated Fat 7g

Cholesterol 0mg 0%

Sodium 150mg 6%

Potassium 350mg 10%

Total Carbohydrate 16g 5%

Dietary Fiber 2g 8%

Sugars 7g

Protein 1g

Vitamin A 120% • Vitamin C 4%

Calcium 15% • Iron 8%

*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Saturated Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Potassium		3,500mg	3,500mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:

Fat 9 Carbohydrate 4 Protein 4

WARNING: Consuming this product can expose you to acrylamide, which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov/food.



SINCE 1982

Distributed by:
KETTLE FOODS, INC.
Salem, OR 97301

SWEET POTATO PIE



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