

ENDORSED
FILED
ALAMEDA COUNTY

JUN 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.

LAMB WESTON HOLDINGS, INC., *et al.*,

Defendants.

Case No. RG 16-838610

~~PROPOSED~~ CONSENT JUDGMENT
AS TO BASIC AMERICAN, INC.

1. DEFINITIONS

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

1.2 "Compliance Date" shall mean the date that is six months after the Effective Date.

1.3 "Covered Products" shall mean Settling Defendant's hash brown potatoes sold or offered for sale to California consumers in a dehydrated form. Specific non-exclusive examples of Covered Products sold in the past by Settling Defendant are listed on Exhibit A.

1 1.4 “Effective Date” means the date on which notice of entry of this Consent Judgment
2 is by the Court is served upon Settling Defendant.

3 **2. INTRODUCTION**

4 2.1 The Parties to this Consent Judgment are the Center For Environmental Health
5 (“CEH”), a California non-profit corporation, and Basic American, Inc. (“Settling Defendant”).
6 CEH and Settling Defendant (the “Parties”) enter into this Consent Judgment to settle certain claims
7 asserted by CEH against Settling Defendant as set forth in Complaint.

8 2.2 On August 26, 2016, CEH issued a 60-day Notice of Violation of Proposition 65 to
9 the California Attorney General, to the District Attorneys of every county in California, to the City
10 Attorneys of every California city with a population greater than 750,000, and to Settling
11 Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons to
12 acrylamide in excess of the warning threshold when using Covered Products under the provided
13 directions for use, without first providing a clear and reasonable Proposition 65 warning.

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

17 2.4 On April 10, 2017, CEH filed the Complaint, naming Settling Defendant as a
18 defendant in the action. Upon entry of this Consent Judgment, to the extent necessary to effectuate
19 this settlement, the operative Complaint in the action is deemed amended such that the term
20 “Products” as to Settling Defendant only means Covered Products.

21 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
23 over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in the County
24 of Alameda, and that this Court has jurisdiction to enter and enforce this Consent Judgment as a full
25 and final resolution of all claims which were or could have been raised in the Complaint based on
26 the facts alleged therein with respect to Covered Products manufactured, distributed, and/or sold by
27 Settling Defendant.
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2.6 Nothing in this Consent Judgment is or shall be construed as an admission by the 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

Beginning on the Compliance Date, Settling Defendant shall be permanently enjoined from manufacturing or purchasing any Covered Products that are sold or offered for sale in California which do not meet the Reformulation Levels in section 3.1 below.

3.1 Reformulation Levels.

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

3.1.1.1 350 parts per billion (“ppb”) by weight on average.

The Average Level is determined by randomly selecting and testing at least one sample each from at least five and up to 30 different lots of a particular Covered Product (or the maximum number of lots available for testing if fewer than 5) during a testing period of at least 365 days. The mean and standard deviation shall be calculated using the sampling data. Any data points that are more than three standard deviations outside the mean shall be discarded once, and the mean and standard deviation recalculated using the remaining data points. The mean determined in accordance with this procedure shall be deemed the “Average Level.”

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

3.1.2.1 500 ppb by weight.

1 The Unit Level shall be determined based on a representative, composite sample taken from the
2 individual unit being tested.

3 **3.2 Compliance Testing.** Compliance with the Reformulation Levels shall be
4 determined by use of a test performed by an accredited laboratory using either GC/MS (Gas
5 Chromatograph/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry) or
6 any other testing method agreed upon by the Parties. Sampling shall be performed in accordance
7 with the sampling protocol attached hereto as Exhibit B, or any other sampling protocol agreed to
8 by Settling Defendant and CEH. Compliance with the Reformulation Levels shall be determined
9 after cooking a Covered Product as if prepared for consumption in accordance with the instructions
10 on the packaging label of that Covered Product. If the label's recommended method includes a
11 range of cooking temperatures or times, the midpoint of those ranges shall be used in evaluating
12 compliance with the Reformulation Levels. Any samples of a Covered Product tested under
13 Sections 3.1.1 and 3.1.2 shall be homogenized before testing for acrylamide content.

14 **4. ENFORCEMENT**

15 **4.1 General Enforcement Provisions.** CEH may, by motion or application for an order
16 to show cause before this Court, enforce the terms and conditions contained in this Consent
17 Judgment. Any action to enforce alleged violations of Section 3.1 by Settling Defendant shall be
18 brought exclusively pursuant to this Section 4, and be subject to the meet and confer requirement of
19 Section 4.2.5, if applicable.

20 **4.2 Enforcement of Reformulation Commitment.**

21 **4.2.1 Covered Product Identification.** Within 30 days after the Compliance Date,
22 Settling Defendant shall notify CEH of a means sufficient to allow CEH to identify Covered
23 Products manufactured or purchased by Settling Defendant on or after that date, for example, a
24 unique brand name or characteristic system of product numbering or labeling. Upon written request
25 by CEH, but no more than once in any calendar year, Settling Defendant shall, within 30 days of
26 receiving a request from CEH, update the information provided to CEH pursuant to this Section
27 4.2.1 by notifying CEH of a means sufficient to allow CEH to identify Covered Products currently
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1 supplied or offered for sale by Settling Defendant. If CEH is unable to determine whether a
2 particular product is a Covered Product as to Settling Defendant based on the information provided
3 to CEH pursuant to this Section 4.2.1, Settling Defendant shall cooperate in good faith with CEH in
4 determining whether the product at issue is a Covered Product supplied or offered for sale by
5 Settling Defendant. All information provided to CEH pursuant to this Section 4.2.1 may be
6 designated by Settling Defendant as competitively sensitive confidential business information, and
7 if so designated shall not be disclosed to any person without the written permission of Settling
8 Defendant. Any motions or pleadings or any other court filings that may reveal information
9 designated as competitively sensitive confidential business information pursuant to this Section
10 shall be submitted in accordance with California Rules of Court 8.46 and 2.550, et seq. The
11 provisions of this Section 4.2.1 shall sunset seven years after the Compliance Date.

12 4.2.2 Notice of Violation. In the event that CEH purchases a Covered Product in
13 California that was manufactured, distributed or sold by Settling Defendant and that has a best-by or
14 sell-by (or equivalent) date or other code that reflects that the Covered Product was manufactured
15 on or after the Compliance Date and for which CEH has laboratory test results showing that the
16 Covered Product has an acrylamide level exceeding the Unit Level, then CEH may issue a Notice of
17 Violation pursuant to this Section.

18 4.2.3 Service of Notice of Violation and Supporting Documentation.

19 4.2.3.1 The Notice of Violation shall be sent to the person(s) identified in
20 Section 8.2 to receive notices for Settling Defendant, and must be served within sixty (60) days of
21 the later of the date the Covered Product at issue was purchased or otherwise acquired by CEH or
22 the date that CEH can reasonably determine that the Covered Product at issue was manufactured,
23 distributed, or sold by Settling Defendant, provided, however, that CEH may have up to an
24 additional sixty (60) days to send the Notice of Violation if, notwithstanding CEH's good faith
25 efforts, the test data required by Section 4.2.2.2 below cannot be obtained by CEH from its
26 laboratory before expiration of the initial sixty (60) day period.
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1 4.2.3.2 The Notice of Violation shall, at a minimum, set forth: (a) the date the
2 Covered Product was purchased; (b) a description of the Covered Product giving rise to the alleged
3 violation, including the name and address of the retail entity from which the sample was obtained
4 and if available information that identifies the product lot; and (c) all test data obtained by CEH
5 regarding the Covered Product and supporting documentation sufficient for validation of the test
6 results, including any laboratory reports, quality assurance reports, and quality control reports
7 associated with testing of the Covered Product.

8 4.2.4 Notice of Election of Response. No more than sixty (60) days after
9 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to
10 CEH whether it elects to contest the allegations contained in a Notice of Violation (“Notice of
11 Election”). Failure to provide a Notice of Election within sixty (60) days of effectuation of service
12 of a Notice of Violation shall be deemed an election to contest the Notice of Violation.

13 4.2.5 If a Notice of Violation is contested, the Notice of Election shall include all
14 then-available non-privileged documentary evidence regarding the alleged violation, including all
15 available test data. If Settling Defendant or CEH later acquires additional test or other non-
16 privileged data regarding the alleged violation, it shall notify the other party and promptly provide
17 all such non-privileged data or information to the party.

18 4.2.6 Meet and Confer. If a Notice of Violation is contested, CEH and Settling
19 Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of
20 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw the
21 original Notice of Election contesting the violation and serve a new Notice of Election to not
22 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay
23 \$2,500 in addition to any payment required under this Consent Judgment. At any time, CEH may
24 withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the result shall be as
25 if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of
26 Violation results within thirty (30) days of a Notice of Election to contest, CEH may file an
27 enforcement motion or application pursuant to Section 4.1. The parties may extend this thirty (30)
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1 day time period by stipulation. In any enforcement proceeding, CEH may seek whatever fines,
2 costs, penalties, attorneys' fees, or other remedies are provided by law for failure to comply with the
3 Consent Judgment.

4 4.2.7 Non-Contested Notices. If Settling Defendant elects to not contest the
5 allegations in a Notice of Violation, it shall undertake corrective action(s) and make payments, if
6 any, as set forth below.

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

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

12 4.2.7.3 In no case shall CEH issue more than one Notice of Violation per
13 manufacturing lot of a type of Covered Product. CEH shall be limited to issuing no more than two
14 total Notices of Violation to Settling Defendant in the first year after the Compliance Date.

15 4.2.8 Payments. Any payments under Section 4.2 shall be made by check
16 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a
17 Notice of Election triggering a payment and which shall be used as reimbursement for costs for
18 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse attorneys’
19 fees and costs incurred in connection with these activities, and shall be the extent of all monetary
20 remedies available to CEH under this Consent Judgment for a non-contested Notice of Violation.

21 4.3 **Repeat Violations.** If Settling Defendant has received five (5) or more Notices of
22 Violation concerning the same type of Covered Product that were not successfully contested or
23 withdrawn, as to the fifth (5th) and subsequent Notices of Violation, at CEH’s option, CEH may
24 seek from Settling Defendant whatever fines, costs, penalties, attorneys’ fees, or other remedies that
25 are provided by law for failure to comply with the Consent Judgment. Prior to seeking such relief,
26 CEH shall meet and confer with Settling Defendant for at least thirty (30) days to determine if
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Settling Defendant and CEH can agree on measures that the Settling Defendant can undertake to prevent future violations.

5. PAYMENTS

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

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

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

For United States Postal Service Delivery:

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

1 For Non-United States Postal Service Delivery:

2 Attn: Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

5 The CEH portion of the civil penalty payment shall be made payable to the Center
6 For Environmental Health and associated with taxpayer identification number 94-3251981. This
7 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
8 94117.

9 5.2.2 An Additional Settlement Payment (“ASP”) to CEH pursuant to Health &
10 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH intends to
11 restrict use of the ASPs received from the Consent Judgment before the Court to the following
12 purposes: the funds will be placed in CEH’s Toxics in Food Fund and used to support CEH
13 programs and activities that seek to educate the public about acrylamide and other toxic chemicals
14 in food, to work with the food industry and agriculture interests to reduce exposure to acrylamide
15 and other toxic chemicals in food, and to thereby reduce the public health impacts and risks of
16 exposure to acrylamide and other toxic chemicals in food sold in California. CEH shall obtain and
17 maintain adequate records to document that ASPs are spent on these activities and CEH agrees to
18 provide such documentation to the Attorney General within thirty (30) days of any request from the
19 Attorney General. The payment pursuant to this Section shall be made payable to the Center for
20 Environmental Health and associated with taxpayer identification number 94-3251981. The
21 payment pursuant to this Section shall be made payable to the Center For Environmental Health,
22 associated with taxpayer identification number 94-3251981 and delivered to Lexington Law Group,
23 503 Divisadero Street, San Francisco, CA 94117.

24 5.2.3 A reimbursement of a portion of CEH’s reasonable attorneys’ fees and
25 costs. The Lexington Law Group portion of the attorneys’ fees and cost reimbursement shall be
26 made payable to the Lexington Law Group and associated with taxpayer identification number 94-
27 3317175. The CEH portion of the attorneys’ fees and cost reimbursement shall be made payable to
28 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 the other Party 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 Settling Defendant's parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, shareholders, successors, assigns, and attorneys ("Defendant Releasees"), and all entities to which Settling Defendant directly or indirectly distributes or sells Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees ("Downstream Defendant Releasees"), of any violation of Proposition 65 based on failure to warn about alleged exposure to acrylamide contained in Covered Products that were manufactured prior to the Compliance Date.

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

1 manufactured by Settling Defendant prior to the Compliance Date.

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

10 7.3 Provided that Settling Defendant complies in full with its obligations under Section 5
11 hereof, compliance with the terms of this Consent Judgment by Settling Defendant and Defendant
12 Releasees shall constitute compliance with Proposition 65 by Settling Defendant, its Defendant
13 Releasees, and its Downstream Defendant Releasees with respect to any alleged failure to warn
14 about acrylamide in Covered Products manufactured, distributed, or sold by Settling Defendant
15 after the Compliance Date.

16 **8. PROVISION OF NOTICE**

17 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the notice
18 shall be sent by first class and electronic mail to:

19 Howard Hirsch
20 Lexington Law Group
21 503 Divisadero Street
22 San Francisco, CA 94117
 hhirsch@lexlawgroup.com

23 8.2 When Settling Defendant is entitled to receive any notice under this Consent
24 Judgment, the notice shall be sent by first class and electronic mail to the person(s) identified in
25 Exhibit A.

26 8.3 Any Party may modify the person and/or address to whom the notice is to be sent by
27 sending the other Parties notice by first class and electronic mail.
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1 **9. COURT APPROVAL**

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

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

12 If the Court does not approve the Consent Judgment, the Parties agree to meet and confer as
13 to whether to modify the language or appeal the ruling. If the Parties do not jointly agree on a course
14 of action to take, then the case shall proceed in its normal course on the Court's trial calendar. If the
15 Court's approval is ultimately overturned by an appellate court, the Parties shall meet and confer as
16 to whether to modify the terms of this Consent Judgment. If the parties do not jointly agree on a
17 course of action to take then the case shall proceed in its normal course on the Court's trial calendar.
18 In the event that this Consent Judgment is entered by the Court and subsequently overturned by any
19 appellate court, then any monies that have been provided to CEH or its counsel under this Consent
20 Judgment shall be refunded within 15 days of the appellate decision becoming final and the Parties
21 shall reasonably cooperate to obtain a timely refund of monies paid to OEHHA under this Consent
22 Judgment.

23 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
24 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose other
25 than to determine whether there was a material breach of Section 9.1.

26 **10. GOVERNING LAW AND CONSTRUCTION**

27 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
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California.

11. ATTORNEYS' FEES

11.1 A Party who unsuccessfully brings or contests an action 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 and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically 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.

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

2 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute
4 the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

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


12 **16. COMPLIANCE WITH REPORTING REQUIREMENTS**

13 16.1 CEH agrees to comply with the reporting form requirements referenced in Health
14 and Safety Code section 25249.7(f).

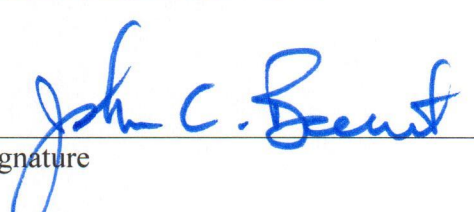
15 **17. EXECUTION IN COUNTERPARTS**

16 17.1 The stipulations to this Consent Judgment may be executed in counterparts and by
17 means of facsimile or portable document format (pdf), which taken together shall be deemed to
18 constitute one document.

1
2 **IT IS SO STIPULATED:**

Dated: <u>2 FEB</u> , 2018	CENTER FOR ENVIRONMENTAL HEALTH  _____ Signature <u>CHARLIE PIZNER</u> _____ Printed Name <u>ASSOCIATE DIRECTOR</u> _____ Title
Dated: _____, 2018	BASIC AMERICAN, INC. _____ Signature _____ Printed Name _____ Title

1
2 **IT IS SO STIPULATED:**

3 4 Dated: _____, 2018 5 6 7 8 9 10 11	CENTER FOR ENVIRONMENTAL HEALTH _____ Signature _____ Printed Name _____ Title
12 13 Dated: <u>February 7</u> , 2018 14 15 16 17 18 19 20 21	BASIC AMERICAN, INC.  _____ Signature <u>John C. Barncut</u> _____ Printed Name <u>Vice President & General Counsel</u> _____ Title

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

3
4 Dated: _____

6/13/18

IOANA PETROU

Judge of the Superior Court

EXHIBIT A

Examples of Covered Products:

All Dehydrated Hash Browns products under the Golden Grill, Golden Grill Premium Russet, Idaho Spuds and Hungry Jack brands.

Settling Defendant's Settlement Payment and Allocation:

Total Settlement Payment	\$132,500
Civil Penalty OEHHA Portion	\$13,417.50
Civil Penalty CEH Portion	\$4,472.50
Additional Settlement Payment	\$13,410
Attorneys' Fees and Costs (LLG)	\$85,465
Attorneys' Fees and Costs (CEH)	\$15,735

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

James D. Collins
Vice President and CFO
Basic American, Inc.
2999 Oak Road, Suite 800
Walnut Creek, CA 94597

With a copy to:

Trenton H. Norris
Sarah Esmaili
Arnold & Porter Kaye Scholer LLP
3 Embarcadero Center, Suite 1000
San Francisco, CA 94111
trent.norris@apks.com
sarah.esmaili@apks.com

EXHIBIT B

Sample Preparation Method

1. Prepare and cook hash browns according to label instructions.
2. In cooking hash browns, an electric skillet with an adjustable temperature gauge (and which can be set to the temperature specified in the label instructions) shall be used. Temperature shall be validated with an appropriate thermometer.
3. Immediately remove hashbrowns from the skillet.

Sample Analysis – if hash browns are prepared offsite and shipped to lab

1. Remove hash browns from the skillet and allow to cool at room temperature for 5 minutes.
2. Refrigerate $\leq 40^{\circ}\text{F}$ for 2-2.5 hours, before freezing.
3. Ship samples for ACR analysis overnight on dry ice.

Data recorded for each sample shall include cooking method details including hash brown temperature, canola oil weight used, skillet ID, cook time, cook temperature, and shipping date (as applicable).