

DEC 03 2019

By William H. Dargatzis
Deputy

CENTER FOR ENVIRONMENTAL HEALTH,)
 Plaintiff,)
 v.)
 FOODSHOULDTASTEGOOD, INC., *et al.*,)
 Defendants.)

**[PROPOSED] CONSENT
JUDGMENT AS TO GENERAL
MILLS, INC. AND
FOODSHOULDTASTEGOOD, INC.**

1.3 “Covered Products” means fried or baked potato or sweet potato based snack products, including Sliced Chips and Extruded Products (as defined below) and that are: (a) manufactured, distributed, sold, and/or offered for sale by Settling Defendants, and (b) sold or offered for sale in California; provided, however, that Covered Products does not include any products sold under the Gardetto’s brand name (hereinafter “Gardetto’s Products”). An initial list

of the Covered Products, divided as to Sliced Chips and Extruded Products, is attached as Exhibit A hereto.

1.4 “Sliced Chips” means sliced potato chips and sliced sweet potato chips.

1.5 “Extruded Products” means all Covered Products other than Sliced Chips. It is the Parties’ intent that the Extruded Products referenced in this Consent Judgment are the kind of products falling within Type 4 in the “extruded, pellet, and baked products” category in the Consent Judgment as to Defendant Snak King Corporation, entered August 31, 2011, in *People v. Snyder’s of Hanover, et al.*, Alameda County Superior Court Case No. RG 09-455286.¹

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

2. INTRODUCTION

2.1 The Parties to this Consent Judgment are the Center for Environmental Health a California non-profit corporation (“CEH”), on the one hand, and General Mills, Inc. and FoodShouldTasteGood, Inc. (“Settling Defendants”), on the other hand. CEH and Settling Defendants (the “Parties”) enter into this Consent Judgment to settle certain claims asserted by CEH against Settling Defendants as set forth in the Complaint.

2.2 On or about September 30, 2016, CEH provided a 60-day Notice of Violation of Proposition 65 to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000, and to Settling Defendants, alleging that Settling Defendants violated Proposition 65 by exposing persons in California to acrylamide contained in Covered Products without first providing a clear and reasonable Proposition 65 warning (the “Notice”).

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

¹ These products are referred to as “Group C, Type 4” products in Exhibit A to the Snak King Consent Judgment, which is attached hereto as Exhibit 2 and available on the Attorney General’s website at <https://oag.ca.gov/prop65/litigation>.

1 2.4 On March 2, 2017, CEH filed the initial Complaint in the above-captioned
2 matter, naming Settling Defendants as original defendants.

3 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this
4 Court has jurisdiction over the allegations of violations contained in the Complaint and personal
5 jurisdiction over Settling Defendants as to the acts alleged in the Complaint, that venue is proper
6 in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent
7 Judgment as a full and final resolution of all claims which were or could have been raised in the
8 Complaint based on the facts alleged therein and in the Notice with respect to Covered Products
9 manufactured, distributed, and/or sold by Settling Defendants. The Parties agree and
10 acknowledge that this Consent Judgment does not resolve CEH's claims in the Complaint against
11 Settling Defendants with respect to acrylamide exposures from Gardetto's Products.

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

20 **3. INJUNCTIVE RELIEF**

21 3.1 **Reformulation of Covered Products.** After the Compliance Date, Settling
22 Defendants shall not purchase or manufacture Covered Products that will be sold or offered for
23 sale in California which do not meet the Reformulation Levels in sections 3.1.1-3.1.2 below.
24 Covered Products purchased, manufactured, distributed, shipped or sold by Settling Defendants
25 prior to the Compliance Date are not subject to the injunctive relief requirements of Section 3,
26 even if such products are sold in California or to California consumers after the Effective Date.

27 3.1.1 For Sliced Chips:
28

3.1.1.1 The average acrylamide concentration shall not exceed 281 parts per billion (“ppb”) by weight (the “Sliced Chips Average Level”).

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

3.1.2 For Extruded Products:

3.1.2.1 The average acrylamide concentration shall not exceed 350 ppb by weight (the “Extruded Products Average Level”).

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

3.2 Average Level Determination. The Average Level (either the Sliced Chips Average Level or the Extruded Products Average Level, as applicable) is determined by randomly selecting and testing at least one (1) sample each from at least five (5) and up to ten (10) different lots of a particular Covered Product (or the maximum number of lots available for testing if fewer than three) 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, 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.” Alternatively, the Average Level may be determined in accordance with any applicable Proposition 65 regulations.

3.3 Compliance Testing. Compliance with the Reformulation Levels shall 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.

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 by a 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.

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 manufactured, distributed, sold or offered for sale by a Settling Defendant with a best-by or sell-by (or equivalent) date or other code that reflects that the Covered Product was manufactured on or after the Compliance Date, and for which CEH has laboratory test results showing that the Covered Product has an acrylamide level exceeding the applicable Unit Level, then CEH may issue a Notice of Violation pursuant to this Section. If the manufacturer or purchase date is not apparent from the dates or coding used on the Covered Product label, CEH shall withdraw the Notice of Violation if Settling Defendants demonstrate that the Covered Product at issue was manufactured or purchased by Settling Defendants before the Compliance Date. Such Notice of Violation shall be based upon a test result sufficient to establish an exceedance of the Unit Level as it is to be evaluated under the sampling and testing criteria described in Section 3 above.

4.2.2 Service of Notice of Violation and Supporting Documentation.

4.2.2.1 The Notice of Violation shall be sent to the person(s) identified in Section 8.2 to receive notices for Settling Defendants, and must be served within sixty (60) days of the later of the date the Covered Product at issue was purchased or otherwise acquired by CEH or the date that CEH can reasonably determine that the Covered Product at issue was manufactured, distributed, shipped, sold, or offered for sale by a Settling Defendant, provided, however, that CEH may have up to an additional sixty (60) days to send the Notice of Violation if, notwithstanding CEH's good faith efforts, the test data required by Section 4.2.2.2 below cannot be obtained by CEH from its laboratory before expiration of the initial sixty (60) day period.

4.2.2.2 The Notice of Violation shall, at a minimum, set forth: (a) the date the Covered Product was purchased; (b) the location at which the Covered Product was

1 purchased; (c) a description of the Covered Product giving rise to the alleged violation, including
2 the name and address of the retail entity from which the sample was obtained and pictures of the
3 product packaging from all sides, which identifies the product lot and (d) all test data obtained by
4 CEH regarding the Covered Product and supporting documentation sufficient for validation of the
5 test results, including any laboratory reports, quality assurance reports, and quality control reports
6 associated with testing of the Covered Product.

7 4.2.3 Notice of Election of Response. No more than sixty (60) days after
8 effectuation of service of a Notice of Violation, Settling Defendants shall provide written notice
9 to CEH whether they elect to contest the allegations contained in a Notice of Violation (“Notice
10 of Election”). Failure to provide a Notice of Election within sixty (60) days of effectuation of
11 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.
12 Upon notice to CEH, Settling Defendants shall be granted up to an additional sixty (60) days to
13 elect a response if, notwithstanding Settling Defendants’ good faith efforts, Settling Defendants
14 are unable to verify the test data provided by CEH in the Notice of Violation before the expiration
15 of the initial sixty (60) day period.

16 4.2.3.1 If a Notice of Violation is contested, the Notice of Election shall
17 include all then-available documents upon which Settling Defendants are relying to contest the
18 alleged violation, including all then-available non-privileged test data. If a Settling Defendant or
19 CEH later acquires additional test or other non-privileged data regarding the alleged violation
20 during the meet and confer period described in Section 4.2.4, it shall notify the other Party and
21 promptly provide all such non-privileged data or information to the Party unless either the Notice
22 of Violation or Notice of Election has been withdrawn.

23 4.2.3.2 Settling Defendants can successfully contest a Notice of Violation
24 if it produces with its Notice of Election a copy of correspondence dated before the time of the
25 purchase that triggered CEH’s Notice of Violation, to a person and/or entity that caused the
26 Covered Product to be sold in California, instructing that person and/or entity to cease offering
27 the Covered Product(s) for sale in California.

1 4.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and Settling
2 Defendants shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of
3 serving a Notice of Election contesting a Notice of Violation, Settling Defendants may withdraw
4 the original Notice of Election contesting the violation and serve a new Notice of Election to not
5 contest the violation, provided, however, that, in this circumstance, Settling Defendants shall pay
6 \$2,500 in addition to any other payment required under this Consent Judgment. At any time,
7 CEH may withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the
8 result shall be as if CEH never issued any such Notice of Violation. If no informal resolution of a
9 Notice of Violation results within thirty (30) days of a Notice of Election to contest, CEH may
10 file an enforcement motion or application pursuant to Section 4.1. The parties may extend this
11 thirty (30) day time period by stipulation. In any such enforcement proceeding, CEH may seek
12 whatever fines, costs, penalties, attorneys' fees, or other remedies are provided by law for an
13 alleged failure to comply with the Consent Judgment.

14 4.2.5 Non-Contested Notices. If Settling Defendants elect to not contest the
15 allegations in a Notice of Violation, they shall undertake corrective action(s) and make payments,
16 if any, as set forth below.

17 4.2.5.1 Settling Defendants shall include in their Notice of Election a
18 detailed description with supporting documentation of the corrective action(s) that they have
19 undertaken or propose to undertake to address the alleged violation. Any such correction shall, at
20 a minimum, provide reasonable assurance that all Covered Products having the same lot number
21 or lot code as that of the Covered Product identified in CEH's Notice of Violation (the "Noticed
22 Covered Products") will not be thereafter be sold in California or offered for sale to California
23 customers by Settling Defendants, and that Settling Defendants have sent instructions to any
24 retailers or customers that offer the Noticed Covered Products for sale to cease offering the
25 Noticed Covered Products for sale to California consumers and to either return all such Noticed
26 Covered Products to the Settling Defendants, or to directly destroy such Noticed Covered
27 Products, if the Settling Defendants have reason to believe that the Noticed Covered Products are
28 still offered for sale to California consumers. Settling Defendants shall make available to CEH,

1 upon reasonable notice (which shall not exceed more than one request per year), for inspection
2 and copying records of any available non-privileged correspondence regarding the foregoing
3 market withdrawal of the Noticed Covered Products.

4 4.2.5.2 If the Notice of Violation is based on a violation of the Unit Level
5 with respect to a single Covered Product, Settling Defendants will be excused from the recall
6 obligation described in Section 4.2.5.1 if Settling Defendants produce test results or other
7 evidence that: (1) demonstrates that the acrylamide levels found by CEH in the unit alleged to be
8 in violation is an aberration; and (2) otherwise provides reasonable assurance that the remainder
9 of the Noticed Covered Products, aside from the unit alleged to be in violation, comply with the
10 Reformulation Levels. The Parties agree that this Section 4.2.5.2 is satisfied if Settling
11 Defendants can demonstrate that the type of Covered Product at issue in the Notice of Violation
12 satisfies the applicable Average Level. However, to avail itself of this provision, Settling
13 Defendant must provide CEH with all non-privileged acrylamide test data in its possession,
14 custody or control pertaining to the type of Covered Product at issue in the Notice of Violation
15 that was performed within the year prior to the date of the Notice of Violation. If there is a
16 dispute over whether Settling Defendants are excused from the recall obligation, Settling
17 Defendants and CEH shall meet and confer before seeking any remedy in court.

18 4.2.5.3 If the Notice of Violation is the first, second, third, or fourth
19 Notice of Violation received by Settling Defendants under Section 4.2.1 that was not successfully
20 contested or withdrawn, then Settling Defendants shall pay \$15,000 for each Notice of Violation.
21 This shall be the sole and exclusive monetary remedy for such non-contested violations and CEH
22 shall not be entitled to seek additional amounts for attorneys' fees and costs, civil penalties,
23 payments in lieu of civil penalties, or any other monetary relief. If Settling Defendants have
24 received more than four (4) Notices of Violation under Section 4.2.1 that were not successfully
25 contested or withdrawn, then Settling Defendants shall pay \$25,000 for each of the fifth (5th) and
26 subsequent Notices of Violation. If Settling Defendants produce with their Notice of Election test
27 data for the Covered Product that: (i) was conducted prior to the date CEH gave Notice of
28 Violation; (ii) was conducted on the same type of Covered Product; and (iii) demonstrates

1 acrylamide levels below the applicable Unit Level, then any payment under this Section shall be
2 reduced by 100 percent (100%) for the first Notice of Violation, by seventy-five percent (75%)
3 for the second Notice of Violation, and by fifty percent (50%) for any subsequent Notice of
4 Violation. If Settling Defendant is excused from the recall obligation pursuant to Section 4.2.5.2,
5 then Settling Defendant shall pay \$2,500 for that Notice of Violation. In no case shall Settling
6 Defendants be obligated to pay more than \$100,000 for all Notices of Violation not successfully
7 contested or withdrawn in any calendar year irrespective of the total number of Notices of
8 Violation issued.

9 4.2.5.4 In no case shall CEH issue more than one Notice of Violation per
10 manufacturing lot of a type of Covered Product. CEH shall be limited to issuing no more than
11 two total Notices of Violation to Settling Defendant in the first three hundred and sixty-five (365)
12 days after the Compliance Date.

13 4.2.6 Payments. Any payments under Section 4.2 shall be made by check
14 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a
15 Notice of Election triggering a payment and shall be used as reimbursement for costs for
16 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse
17 attorneys’ fees and costs incurred in connection with these activities, and shall be the extent of all
18 monetary remedies available to CEH under this Consent Judgment for a non-contested Notice of
19 Violation.

20 4.3 **Repeat Violations.** If Settling Defendants have received five (5) or more
21 Notices of Violation concerning the same type of Covered Product that were not successfully
22 contested or withdrawn, as to the fifth (5th) and subsequent Notices of Violation in any two (2)
23 year period then, at CEH’s option, CEH may seek from Settling Defendants whatever fines, costs,
24 penalties, attorneys’ fees, or other remedies that are provided by law for failure to comply with
25 the Consent Judgment. Prior to seeking such relief, CEH shall meet and confer with Settling
26 Defendants for at least thirty (30) days to determine if Settling Defendants and CEH can agree on
27 measures that Settling Defendants can undertake to prevent future alleged violations.
28

1 **5. PAYMENTS**

2 **5.1 Payments by Settling Defendants.** Within thirty (30) calendar days of the
3 Effective Date, Settling Defendants shall pay the total sum of \$225,000 as a settlement payment
4 as further set forth in this Section.

5 **5.2 Allocation of Payments.** The total settlement amount for Settling
6 Defendants shall be paid in five (5) separate checks in the amounts specified below and delivered
7 as set forth below. Any failure by Settling Defendants to comply with the payment terms herein
8 shall be subject to a stipulated late fee to be paid by Settling Defendants to CEH in the amount of
9 \$100 for each day the full payment is not received after the payment due date set forth in Section
10 5.1. The late fees required under this Section shall be recoverable, together with reasonable
11 attorneys' fees, in an enforcement proceeding brought pursuant to Section 4 of this Consent
12 Judgment. The funds paid by Settling Defendants shall be allocated as set forth below between
13 the following categories and made payable as follows:

14 **5.2.1 \$30,575 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).**
15 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §
16 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
17 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
18 payment for \$22,931.25 shall be made payable to OEHHA and associated with taxpayer
19 identification number 68-0284486. This payment shall be delivered as follows:

20 For United States Postal Service Delivery:

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

26 For Non-United States Postal Service Delivery:

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

1 The CEH portion of the civil penalty payment for \$7,643.75 shall be made payable
2 to the Center for Environmental Health and associated with taxpayer identification number 94-
3 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
4 Francisco, CA 94117.

5 5.2.2 \$22,925 as an Additional Settlement Payment (“ASP”) to CEH pursuant to
6 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH
7 intends to restrict use of the ASPs received from this Consent Judgment to the following
8 purposes: the funds will be placed in CEH’s Toxics in Food Fund and used to support CEH
9 programs and activities that seek to educate the public about acrylamide and other toxic
10 chemicals in food, to work with the food industry and agriculture interests to reduce exposure to
11 acrylamide and other toxic chemicals in food, and to thereby reduce the public health impacts and
12 risks of exposure to acrylamide and other toxic chemicals in food sold in California. CEH shall
13 obtain and maintain adequate records to document that ASPs are spent on these activities and
14 CEH agrees to provide such documentation to the Attorney General within thirty (30) days of any
15 request from the Attorney General. The payment pursuant to this Section shall be made payable
16 to the Center for Environmental Health and associated with taxpayer identification number 94-
17 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
18 Francisco, CA 94117.

19 5.2.3 \$171,500 as a reimbursement of a portion of CEH’s reasonable attorneys’
20 fees and costs. The attorneys’ fees and cost reimbursement shall be made in two separate checks
21 as follows: (a) \$144,665 payable to the Lexington Law Group and associated with taxpayer
22 identification number 94-3317175; and (b) \$26,835 payable to the Center for Environmental
23 Health and associated with taxpayer identification number 94-3251981. These payments shall be
24 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

25 **6. MODIFICATION AND DISPUTE RESOLUTION**

26 6.1 **Modification.** This Consent Judgment may be modified from time to time
27 by express written agreement of the Parties, with the approval of the Court and prior notice to the
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1 Attorney General's Office, or by an order of this Court upon motion and prior notice to the
2 Attorney General's Office and in accordance with law.

3 **6.2 Notice; Meet and Confer.** Any Party seeking to modify this Consent
4 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a
5 motion to modify the Consent Judgment.

6 **6.3 Other CEH Settlements.** Settling Defendants may move to modify this
7 Consent Judgment to substitute a higher Reformulation Level that CEH agrees to in a future
8 consent judgment applicable to products similar to the Covered Products, and CEH agrees not to
9 oppose any such motion except for good cause shown. Any such modification shall only apply to
10 Covered Products that are similar to those products that are subject to a higher Reformulation
11 Level.

12 **6.4 Other Court Decisions Regarding Similar Products.** If a final decision
13 of a court determines that warnings for acrylamide exposures or that enforcement of Proposition
14 65 claims for acrylamide exposures are preempted or otherwise unlawful or unconstitutional with
15 respect to products similar to the Covered Products, then Settling Defendants may move to
16 modify this Consent Judgment to conform to such ruling in order to avoid unfair, inconsistent, or
17 anti-competitive results.

18 **6.5 Change in Proposition 65.** If Proposition 65 or its implementing
19 regulations (including but not limited to the "safe harbor no significant risk level" for acrylamide
20 set forth at Cal. Code Regs., tit. 27, section 25705, subdivision (c)(2) or any "alternative risk
21 level" adopted by regulation or court decision) are changed from their terms as they exist on the
22 date of entry of this Consent Judgment in a manner that impacts the Reformulation Levels, or if
23 OEHHA takes some other final regulatory action for products similar to the Covered Product in a
24 manner that impacts the Reformulation Levels or that determines that warnings for acrylamide are
25 not required for such products, then Settling Defendants may seek to modify this Consent
26 Judgment to modify the Reformulation Levels. The Parties recognize that the Reformulation
27 Levels are based on a compromise of a number of issues, and that a change to the "safe harbor no
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significant risk level” for acrylamide would not necessarily entitle a Party to a modification of the terms of this Consent Judgment corresponding in a linear relationship with such a change.

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

7. CLAIMS COVERED AND RELEASE

7.1 Provided that Settling Defendants comply in full with their 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 Defendants and their 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 Defendants directly or indirectly distribute or sell 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 purchased, manufactured, distributed, shipped, sold, or offered for sale by Settling Defendants prior to the Compliance Date, even if such products are sold in California or to California consumers after the Compliance Date.

7.2 Provided that Settling Defendants comply in full with their obligations under Section 5 hereof, CEH, for itself, its agents, successors and assigns, releases, waives, and forever discharges any and all claims against Settling Defendants, 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

1 public interest regarding the failure to warn about exposure to acrylamide arising in connection
2 with Covered Products that were purchased, manufactured, distributed, shipped, sold, or offered
3 for sale by Settling Defendants prior to the Compliance Date, even if such products are sold in
4 California or to California consumers after the Compliance Date.

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

11 **8. PROVISION OF NOTICE**

12 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
13 notice shall be sent by first class and electronic mail to:

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

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

21 David T. Biderman
22 Perkins Coie LLP
23 1888 Century Park East, Suite 1700
24 Los Angeles, CA 90067-1721
25 DBiderman@perkinscoie.com

26 Rachel Porter
27 General Mills, Inc.
28 Number One General Mills Blvd.
Minneapolis, MN 55426
Rachel.Porter@genmills.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.

1 **9. COURT APPROVAL**

2 9.1 This Consent Judgment shall become effective upon the date signed by CEH
3 and 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 the Court does not approve the Consent Judgment, the Parties agree to
7 meet and confer as to whether to modify the language or appeal the ruling. If the Parties do not
8 jointly agree on a course of action to take then the case shall proceed in its normal course on the
9 Court's trial calendar. In the event that this Consent Judgment is entered by the Court and
10 subsequently overturned by any appellate court, then any monies that have been provided to CEH
11 or its counsel under this Consent Judgment shall be refunded within 15 days of the appellate
12 decision becoming final and the Parties shall reasonably cooperate to obtain a timely refund of
13 monies paid to OEHHA under this Consent Judgment.

14 9.3 If this Consent Judgment is not entered by the Court, it shall be of no force or
15 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
16 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

17 Within ten (10) days of receiving the initial payments as required by Section 5.1,
18 CEH shall dismiss all other defendants besides Settling Defendants that are named in this action
19 without prejudice, and those defendants shall waive all costs in this action.

20 **10. GOVERNING LAW AND CONSTRUCTION**

21 10.1 The terms of this Consent Judgment shall be governed by the laws of the
22 State of California.

23 **11. ATTORNEYS' FEES**

24 11.1 A Party who unsuccessfully brings or contests an action, motion, or
25 application arising out of this Consent Judgment shall be required to pay the prevailing Party's
26 reasonable attorneys' fees and costs.

27 11.2 Nothing in this Section 11 shall preclude a party from seeking an award of
28 sanctions pursuant to law.

1 **12. ENTIRE AGREEMENT**

2 12.1 This Consent Judgment contains the sole and entire agreement and
3 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
4 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
5 merged herein and therein. There are no warranties, representations, or other agreements between
6 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
7 implied, other than those specifically referred to in this Consent Judgment have been made by any
8 Party hereto. No other agreements not specifically contained or referenced herein, oral or
9 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
10 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
11 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
12 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
13 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
14 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
15 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

16 **13. RETENTION OF JURISDICTION**

17 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
18 Consent Judgment.

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

20 14.1 Each signatory to this Consent Judgment certifies that he or she is fully
21 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
22 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
23 Party.

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

25 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any
26 claim against any other entity on terms that are different from those contained in this Consent
27 Judgment. Settling Defendants may move to modify this Consent Judgment pursuant to Section 6
28 to substitute higher 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. COMPLIANCE WITH REPORTING REQUIREMENTS

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

17. EXECUTION IN COUNTERPARTS

17.1 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: 12/3/2019

MICHAEL MARKMAN

Judge of the Superior Court

IT IS SO STIPULATED:

Dated: 10/3, 2019

CENTER FOR ENVIRONMENTAL HEALTH

Michael Green
Signature

Michael Green
Printed Name

CEO
Title

1 Dated: Oct. 2, 2019

GENERAL MILLS, INC.

2
3 Chris Rauschl
4 Signature

5 Chris Rauschl
6 Printed Name

7 Assistant Secretary
8 Title

9 Dated: Oct. 2, 2019

FOODSHOULDTASTEGOOD, INC.

10
11 Chris Rauschl
12 Signature

13 Chris Rauschl
14 Printed Name

15 Assistant Secretary
16 Title

EXHIBIT A

Extruded Products

1. FSTG Sweet Potato Tortilla Chips

Sliced Chips

1. FSTG Sweet Potato Kettle Cooked Chips
2. FSTG Sweet Potato Barbecue Kettle Cooked Chips
3. FSTG Sweet Potato Ancho Kettle Cooked Chips
4. FSTG Sweet Potato Salt and Pepper Kettle Cooked Chips