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ENDORSED  
FILED  
ALAMEDA COUNTY

MAY 09 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, )

Case No. RG 17- 881940

Plaintiff, )

~~PROPOSED~~ CONSENT JUDGMENT  
AS TO THINK FOOD GROUP LLC

v. )

THINK FOOD GROUP LLC, *et al.*, )

Defendants. )

**1. DEFINITIONS**

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

1.2 "Covered Products" means sliced potato chips. It is the Parties' intent that the Covered Products referenced in this Consent Judgment are the kind of products falling within in the "potato chip products" category in the Consent Judgment as to Defendant Frito-Lay, Inc., entered

1 August 1, 2008, in *People v. Frito-Lay, Inc., et al.*, Los Angeles County Superior Court Case No.  
2 BC 338956.<sup>1</sup>

3 1.3 “Effective Date” means the date on which notice of entry of this Consent Judgment  
4 by the Court is served upon Settling Defendant.

5 **2. INTRODUCTION**

6 2.1 The Parties to this Consent Judgment are the Center for Environmental Health, a  
7 California non-profit corporation (“CEH”) and Think Food Group LLC (“Settling Defendant”).  
8 CEH and Settling Defendant (the “Parties”) enter into this Consent Judgment to settle certain claims  
9 asserted by CEH against Settling Defendant as set forth in the Complaint.

10 2.2 On or about October 28, 2016, CEH provided a 60-day Notice of Violation of  
11 Proposition 65 (the “Notice”) to the California Attorney General, the District Attorneys of every  
12 county in California, the City Attorneys of every California city with a population greater than  
13 750,000, and to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by  
14 exposing persons in California to acrylamide contained in Covered Products without first providing  
15 a clear and reasonable Proposition 65 warning.

16 2.3 CEH alleges that Settling Defendant is a corporation or other business entity that  
17 manufactures, distributes, sells, or offers for sale Covered Products that are sold in the State of  
18 California or has done so at times relevant to the Complaint.

19 2.4 On November 9, 2017, CEH filed the Complaint in the above-captioned matter,  
20 naming Settling Defendant as an original defendant.

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

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27 <sup>1</sup> Examples of these products are found in Exhibit A to the Frito-Lay Consent Judgment, which is available at  
28 <http://www.prop65daily.com/Litigation/People%20v%20FritoLay%20LA%20BC338956/People%20v.%20Frito-Lay%20-%20Consent%20Judgment%20as%20to%20Frito-Lay.pdf>.

1 the facts alleged therein and in the Notice with respect to Covered Products manufactured,  
2 distributed, and/or sold by Settling Defendant.

3 2.6 Nothing in this Consent Judgment is or shall be construed as an admission against  
4 interest by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall  
5 compliance with the Consent Judgment constitute or be construed as an admission against interest  
6 by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this  
7 Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the  
8 Parties may have in any other pending or future legal proceedings. This Consent Judgment is the  
9 product of negotiation and compromise and is accepted by the Parties solely for purposes of  
10 settling, compromising, and resolving issues disputed in this action.

### 11 **3. INJUNCTIVE RELIEF**

12 3.1 **Reformulation of Covered Products.** Commencing on August 1, 2018 (the  
13 “Compliance Date”), Settling Defendant shall not purchase, manufacture, or import Covered  
14 Products that are thereafter offered for sale in California that exceed the following acrylamide  
15 concentration levels (the “Reformulation Levels”):

16 3.1.1.1 The average acrylamide concentration shall not exceed 281 parts per  
17 billion (“ppb”) by weight (the “Average Level”). The Average Level is determined by randomly  
18 selecting and testing at least 1 sample each from 5 different lots of a particular type Covered  
19 Product (or the maximum number of lots available for testing if less than 5) during a testing period  
20 of at least 60 days.

21 3.1.1.2 The acrylamide concentration of any individual unit of Covered  
22 Products shall not exceed 350 ppb by weight, based on a representative composite sample taken  
23 from the individual unit being tested (the “Unit Level”). Testing for acrylamide shall be performed  
24 using either GC/MS (Gas Chromatography/Mass Spectrometry), LC-MS/MS (Liquid  
25 Chromatograph-Mass Spectrometry/Mass Spectrometry), or any other testing method agreed upon  
26 by the Parties to this Consent Judgment.

27 3.2 **Clear and Reasonable Warnings.** A Covered Product purchased, manufactured,  
28 imported by Settling Defendant after the Compliance Date may, as an alternative to meeting the

1 Reformulation Levels set forth in Section 3.1, thereafter be sold or offered for sale in California  
2 with a warning that complies with the provisions of this Section 3.2 (a “Clear and Reasonable  
3 Warning”). A Clear and Reasonable Warning under this Agreement shall state:

4 3.2.1 For warnings on the packaging of the Covered Product:

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

8 The statement shall be prominently displayed on the Covered Product. Or,

9 3.2.2 For internet or catalog sales:

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

13 This statement shall be prominently displayed with such conspicuousness, as compared with other  
14 words, statements or designs as to render it likely to be read and understood by an ordinary  
15 individual prior to sale. The word “**WARNING**” shall be displayed in all capital letters and bold  
16 print. If the warning statement is displayed on the Covered Product’s label, it must be set off from  
17 other surrounding information and enclosed in a text box. For internet or catalog sales where the  
18 consumer is not physically present, the warning statement shall be displayed in such a manner that it  
19 is likely to be read and understood by an ordinary individual prior to the authorization of or actual  
20 payment. If Settling Defendant elects to avail itself of the warning option provided by this Section  
21 3.2, Settling Defendant shall provide written notice to CEH prior to Settling Defendant’s first  
22 distribution or sale of Covered Products with warnings under this Section 3.2, and Settling  
23 Defendant concurrently shall make the additional payment specified in Section 5.2.4 below.

#### 24 **4. ENFORCEMENT**

25 4.1 **General Enforcement Provisions.** CEH may, by motion or application for an order  
26 to show cause before this Court, enforce the terms and conditions contained in this Consent  
27 Judgment. Any action to enforce alleged violations of Section 3 by Settling Defendant shall be  
28 brought exclusively pursuant to this Section 4, and be subject to the meet and confer requirement of  
Section 4.2.4 if applicable.

1           4.2     **Enforcement of Injunctive Relief by CEH.**

2                     4.2.1     Notice of Violation. In the event that CEH identifies a Covered Product  
3 that was sold or offered for sale to California consumers by Settling Defendant with a best-by or  
4 sell-by (or equivalent) date more than 12 months after the Compliance Date, and for which CEH has  
5 laboratory test results showing that the Covered Product exceeds the Unit Level, and which lacks a  
6 Clear and Reasonable Warning that complies with Section 3.2, CEH may issue a Notice of  
7 Violation pursuant to this Section.

8                     4.2.2     Service of Notice of Violation and Supporting Documentation.

9                     4.2.2.1     The Notice of Violation shall be sent to the person(s) identified in  
10 Section 8.2 to receive notices for Settling Defendant, and must be served within sixty (60) days of  
11 the later of the date the Covered Product at issue was purchased or otherwise acquired by CEH or  
12 the date that CEH can reasonably determine that the Covered Product at issue was manufactured,  
13 shipped, sold, or offered for sale by Settling Defendant, provided, however, that CEH may have up  
14 to an additional sixty (60) days to send the Notice of Violation if, notwithstanding CEH’s good faith  
15 efforts, the test data required by Section 4.2.2.2 below cannot be obtained by CEH from its  
16 laboratory before expiration of the initial sixty (60) day period.

17                     4.2.2.2     The Notice of Violation shall, at a minimum, set forth: (a) the date the  
18 Covered Product was purchased; (b) the location at which the Covered Product was purchased; (c) a  
19 description of the Covered Product giving rise to the alleged violation, including the name and  
20 address of the retail entity from which the sample was obtained and pictures of the product  
21 packaging from all sides, which identifies the product lot; and (d) all test data obtained by CEH  
22 regarding the Covered Product 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 Product.

25                     4.2.3     Notice of Election of Response. No more than thirty (30) days after  
26 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to  
27 CEH whether it elects to contest the allegations contained in a Notice of Violation (“Notice of  
28 Election”). Failure to provide a Notice of Election within thirty (30) days of effectuation of service

1 of a Notice of Violation shall be deemed an election to contest the Notice of Violation. Upon notice  
2 to CEH, Settling Defendant may have up to an additional sixty (60) days to elect if, notwithstanding  
3 Settling Defendant's good faith efforts, Settling Defendant is unable to verify the test data provided  
4 by CEH before expiration of the initial thirty (30) day period.

5 4.2.4 If a Notice of Violation is contested, the Notice of Election shall include all  
6 documents upon which Settling Defendant is relying to contest the alleged violation, including all  
7 available acrylamide test data for Covered Products with the same lot number as that of the Covered  
8 Product identified in CEH's Notice of Violation (the "Noticed Covered Products"). If Settling  
9 Defendant or CEH later acquires additional test or other data regarding the alleged violation during  
10 the meet and confer period described in Section 4.2.4, they shall notify the other party and promptly  
11 provide all such data or information to the party unless either the Notice of Violation or Notice of  
12 Election has been withdrawn. Settling Defendant may contest a violation on the grounds that, with  
13 respect to the specific Covered Product purchased by CEH for its Notice of Violation: (a) Settling  
14 Defendant's distributor or retailer customer represented to Settling Defendant that it would not sell  
15 or distribute that Covered Product within the State of California; and (b) Settling Defendant did not  
16 directly sell in California or ship to California such Covered Product.

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

1                   4.2.6    Non-Contested Notices. If Settling Defendant elects to not contest the  
2 allegations in a Notice of Violation, they shall undertake corrective action(s) and make payments, if  
3 any, as set forth below.

4                   4.2.6.1    Settling Defendant shall include in its Notice of Election a detailed  
5 description with supporting documentation of the corrective action(s) that it has undertaken or  
6 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,  
7 provide reasonable assurance that all Noticed Covered Products will not be thereafter be sold or  
8 offered for sale in California. Settling Defendant shall make available to CEH for inspection and  
9 copying records of non-privileged correspondence sufficient to show market withdrawal of the  
10 Noticed Covered Products to the extent it has such documents on file. If the Notice of Violation is  
11 based on a violation of the Unit Level with respect to a single Covered Product, Settling Defendant  
12 may be excused from the recall obligation described in the foregoing (but not the monetary  
13 payments, if any, required by this Section 4) if Settling Defendant produces test results and other  
14 evidence that: (1) demonstrates that the acrylamide levels found by CEH in the unit alleged to be in  
15 violation is an aberration; and (2) otherwise provides reasonable assurance that the remainder of the  
16 Noticed Covered Products, aside from the unit alleged to be in violation, comply with the  
17 Reformulation Levels. The Parties agree that this Section 4.2.6.1 is satisfied if Settling Defendant  
18 can demonstrate that the type of Covered Product at issue in the Notice of Violation satisfies the  
19 Average Level. However, to avail itself of this provision, Settling Defendant must provide CEH  
20 with all non-privileged acrylamide test data in its possession, custody or control pertaining to the  
21 type of Covered Product at issue in the Notice of Violation that was performed within the year prior  
22 to the date of the Notice of Election. If there is a dispute over whether Settling Defendant is  
23 excused from the corrective action and penalty, Settling Defendant and CEH shall meet and confer  
24 before seeking any remedy in court. In no case shall CEH issue more than one Notice of Violation  
25 per manufacturing lot of a type of Covered Product, nor shall CEH issue more than two Notices of  
26 Violation in the first year following the Compliance Date.

27                   4.2.6.2    If the Notice of Violation is the first, second, third, or fourth Notice of  
28 Violation received by Settling Defendant under Section 4.2.1 that was not successfully contested or

1 withdrawn, then Settling Defendant shall pay \$10,000 for each Notice of Violation. If Settling  
2 Defendant has received more than four (4) Notices of Violation under Section 4.2.1 that were not  
3 successfully contested or withdrawn, then Settling Defendant shall pay \$20,000 for each Notice of  
4 Violation. If Settling Defendant produces with its Notice of Election test data for the Covered  
5 Product that : (i) was conducted prior to the date CEH gave Notice of Violation; (ii) was conducted  
6 on the same type of Covered Product; and (iii) demonstrates acrylamide levels below the applicable  
7 Reformulation Level, then any payment under this Section shall be reduced by 100 percent (100%)  
8 for the first Notice of Violation, by seventy-five percent (75%) for the second Notice of Violation,  
9 and by fifty percent (50%) for any subsequent Notice of Violation. If Settling Defendant is excused  
10 from the recall obligation pursuant to Section 4.2.6.1, then Settling Defendant shall pay \$2,500 for  
11 that Notice of Violation. In no case shall Settling Defendant be obligated to pay more than  
12 \$100,000 for all Notices of Violation not successfully contested or withdrawn in any calendar year  
13 irrespective of the total number of Notices of Violation issued.

14           4.2.7 Payments. Any payments under Section 4.2 shall be made by check  
15 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a  
16 Notice of Election triggering a payment and shall be used as reimbursement for costs for  
17 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse attorneys’  
18 fees and costs incurred in connection with these activities.

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

## 26 **5. PAYMENTS**

27           5.1 **Payments by Settling Defendant.** Within ten (10) calendar days of the Effective  
28 Date, Settling Defendant shall pay the total sum of \$45,000 as a settlement payment as further set



1 forth in this Section.

2           **5.2 Allocation of Payments.** The total settlement amount shall be paid in five (5)  
3 separate checks in the amounts specified below and delivered as set forth below. Any failure by  
4 Settling Defendant to comply with the payment terms herein shall be subject to a stipulated late fee  
5 to be paid by Settling Defendant to CEH in the amount of \$50 for each day the full payment is not  
6 received after the payment due date set forth in Section 5.1. The late fees required under this  
7 Section shall be recoverable, together with reasonable attorneys' fees, in an enforcement proceeding  
8 brought pursuant to Section 4 of this Consent Judgment. The funds paid by Settling Defendant  
9 shall be allocated as set forth below between the following categories and made payable as follows:

10           5.2.1 \$5,890 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).

11 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §  
12 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health  
13 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment  
14 for \$4,417.50 shall be made payable to OEHHA and associated with taxpayer identification number  
15 68-0284486. This payment shall be delivered as follows:

16                           For United States Postal Service Delivery:

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

20                           For Non-United States Postal Service Delivery:

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

24  
25           The CEH portion of the civil penalty payment for \$1,472.50 shall be made  
26 payable to the Center for Environmental Health and associated with taxpayer identification number  
27 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San  
28 Francisco, CA 94117.

1                   5.2.2   \$4,410 as an Additional Settlement Payment (“ASP”) to CEH pursuant to  
2 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH  
3 intends to restrict use of the ASPs received from this Consent Judgment to the following purposes:  
4 the funds will be placed in CEH’s Toxics in Food Fund and used to support CEH programs and  
5 activities that seek to educate the public about acrylamide and other toxic chemicals in food, to  
6 work with the food industry and agriculture interests to reduce exposure to acrylamide and other  
7 toxic chemicals in food, and to thereby reduce the public health impacts and risks of exposure to  
8 acrylamide and other toxic chemicals in food sold in California. CEH shall obtain and maintain  
9 adequate records to document that ASPs are spent on these activities and CEH agrees to provide  
10 such documentation to the Attorney General within thirty (30) days of any request from the  
11 Attorney General. The payment pursuant to this Section shall be made payable to the Center for  
12 Environmental Health and associated with taxpayer identification number 94-3251981. This  
13 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
14 94117.

15                   5.2.3   \$34,700 as a reimbursement of a portion of CEH’s reasonable attorneys’  
16 fees and costs. The attorneys’ fees and cost reimbursement shall be made in two separate checks as  
17 follows: (a) \$29,465 payable to the Lexington Law Group and associated with taxpayer  
18 identification number 94-3317175; and (b) \$5,235 payable to the Center for Environmental Health  
19 and associated with taxpayer identification number 94-3251981. These payments shall be delivered  
20 to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

21                   5.2.4   **Additional Civil Penalty.** If Settling Defendant avails itself of the warning  
22 option provided for by Section 3.2, Settling Defendant shall make an additional payment of \$22,500  
23 as a civil penalty, concurrently with its written notice as provided in Section 3.2. This additional  
24 civil penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12  
25 (25% to CEH and 75% to the State of California’s Office of Environmental Health Hazard  
26 Assessment (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty payment for  
27 \$16,875 shall be made payable to OEHHA, associated with taxpayer identification number 68-  
28 0284486, and sent to the OEHHA address set forth in section 5.2.1 above. The CEH portion of the

1 additional civil penalty payment for \$5,625 shall be made payable to the Center for Environmental  
2 Health and associated with taxpayer identification number 94-3251981. This payment shall be  
3 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

4 **6. MODIFICATION AND DISPUTE RESOLUTION**

5 6.1 **Modification.** This Consent Judgment may be modified from time to time by  
6 express written agreement of the Parties, with the approval of the Court and prior notice to the  
7 Attorney General’s Office, or by an order of this Court upon motion and prior notice to the Attorney  
8 General’s Office and in accordance with law.

9 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
10 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
11 modify the Consent Judgment.

12 **7. CLAIMS COVERED AND RELEASE**

13 7.1 Provided that Settling Defendant complies in full with its obligations under Section 5  
14 above, this Consent Judgment is a full, final and binding resolution between CEH, on behalf of  
15 itself and its successors and assigns and in the public interest, and Settling Defendant and its  
16 parents, subsidiaries, affiliated entities that are under common ownership, directors, officers,  
17 employees, agents, shareholders, successors, and assigns (“Defendant Releasees”), and all entities  
18 to which Settling Defendant directly or indirectly distributes or sells Covered Products, including  
19 but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees  
20 (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn  
21 about alleged exposure to acrylamide contained in Covered Products that were manufactured,  
22 purchased, or imported prior to the Compliance Date.

23 7.2 Provided that Settling Defendant complies in full with its obligations under Section 5  
24 above, CEH, for itself, its agents, successors and assigns, releases, waives, and forever discharges  
25 any and all claims against Settling Defendant, Defendant Releasees, and Downstream Defendant  
26 Releasees arising from any violation of Proposition 65 or any other statutory or common law claims  
27 that have been or could have been asserted by CEH individually or in the public interest regarding  
28 the failure to warn about exposure to acrylamide arising in connection with Covered Products

1 manufactured, purchased, or imported by Settling Defendant prior to the Compliance Date.

2 7.3 Provided that Settling Defendant complies in full with its obligations under Section 5  
3 above, compliance with the terms of this Consent Judgment by Settling Defendant shall constitute  
4 compliance with Proposition 65 by Settling Defendant, Defendant Releasees and Downstream  
5 Defendant Releasees with respect to any alleged failure to warn about acrylamide in Covered  
6 Products manufactured, purchased, or imported by Settling Defendant on and after the Compliance  
7 Date.

8 **8. PROVISION OF NOTICE**

9 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the notice  
10 shall be sent by first class and electronic mail to:

11 Howard Hirsch  
12 Lexington Law Group  
13 503 Divisadero Street  
14 San Francisco, CA 94117  
15 [hhirsch@lexlawgroup.com](mailto:hhirsch@lexlawgroup.com)

16 8.2 When Settling Defendant is entitled to receive any notice under this Consent  
17 Judgment, the notice shall be sent by first class and electronic mail to:

18 Sarah Esmaili  
19 Arnold & Porter Kaye Scholer  
20 Three Embarcadero Center, 10<sup>th</sup> Floor  
21 San Francisco, California 94111  
22 [sarah.esmaili@apks.com](mailto:sarah.esmaili@apks.com)

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

25 **9. COURT APPROVAL**

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

9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect  
and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

1 **10. GOVERNING LAW AND CONSTRUCTION**

2 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
3 California.

4 **11. ATTORNEYS' FEES**

5 11.1 A Party who unsuccessfully brings or contests an action, motion, or application  
6 arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable  
7 attorneys' fees and costs.

8 11.2 Nothing in this Section 11 shall preclude a party from seeking an award of sanctions  
9 pursuant to law.

10 **12. ENTIRE AGREEMENT**

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

25 **13. RETENTION OF JURISDICTION**

26 13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent  
27 Judgment.  
28

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 an entity that is not 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 identical to the Covered Products, and CEH agrees not to oppose any such  
11 motion except for good cause shown.

12 **16. EXECUTION IN COUNTERPARTS**

13 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
14 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
15 constitute one document.



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

Dated: \_\_\_\_\_  
Judge of the Superior Court

**IT IS SO STIPULATED:**

Dated: _____, 2018	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>  _____ Signature  _____ Printed Name  _____ Title
Dated: <u>Feb. 9</u> , 2018	<b>THINK FOOD GROUP LLC</b>  <u>Michael Doneff</u> Signature  Michael Doneff Printed Name  Chief Marketing Officer Title