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ALAMEDA COUNTY

APR 18 2018

CLERK OF THE SUPERIOR COURT

By PAM WILLIAMS  
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH, ) Case No. RG17-851470  
Plaintiff, )  
v. ) ~~[PROPOSED]~~ CONSENT JUDGMENT  
SNACK INNOVATIONS, INC., *et al.*, ) AS TO WARNOCK FOOD  
Defendants. ) PRODUCTS, INC.

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**1. DEFINITIONS**

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

1.2 "Covered Products" means fried or baked potato or sweet potato based snack food products, including Sliced Chips and Extruded Products (as defined below).

1.3 "Sliced Chips" means sliced potato chips and sliced sweet potato chips.

1           1.4     “Extruded Products” means all Covered Products other than Sliced Chips. It is the  
2 Parties’ intent that the Extruded Products referenced in this Consent Judgment are the kind of  
3 products falling within Type 4 in the “extruded, pellet, and baked products” category in the  
4 Consent Judgment as to Defendant Snak King Corporation, entered August 31, 2011, in *People v.*  
5 *Snyder’s of Hanover, et al.*, Alameda County Superior Court Case No. RG 09-455286.<sup>1</sup>

6           1.5     “Effective Date” means the date on which notice of entry of this Consent  
7 Judgment by the Court is served upon Settling Defendant.

8           **2.     INTRODUCTION**

9           2.1     The Parties to this Consent Judgment are the Center for Environmental Health, a  
10 California non-profit corporation (“CEH”) and Warnock Food Products, Inc. (“Settling  
11 Defendant”). CEH and Settling Defendant (the “Parties”) enter into this Consent Judgment to  
12 settle certain claims asserted by CEH against Settling Defendant as set forth in the Complaint in  
13 the above-captioned matter.

14           2.2     On or about January 12, 2017, CEH provided a 60-day Notice of Violation of  
15 Proposition 65 to the California Attorney General, to the District Attorneys of every county in  
16 California, to the City Attorneys of every California city with a population greater than 750,000,  
17 and to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing  
18 persons to acrylamide contained in Covered Products without first providing a clear and  
19 reasonable Proposition 65 warning.

20           2.3     Settling Defendant is a corporation or other business entity that manufactures,  
21 distributes, sells, or offers for sale Covered Products that are sold in the State of California or has  
22 done so in the past.

23           2.4     On March 2, 2017, CEH filed the original complaint in the above-captioned  
24 matter. On April 3, 2017, CEH filed the Complaint, naming Settling Defendant as a defendant.

25           2.5     For purposes of this Consent Judgment only, the Parties stipulate that this Court  
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27 \_\_\_\_\_  
28 <sup>1</sup> These products are referred to as “Group C, Type 4” products in Exhibit A to the Snak King Consent Judgment.

1 has jurisdiction over the allegations of violations contained in the operative Complaint and  
2 personal jurisdiction over Settling Defendant as to the acts alleged in the operative Complaint,  
3 that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and  
4 enforce this Consent Judgment as a full and final resolution of all claims which were or could  
5 have been raised in the operative Complaint based on the facts alleged therein with respect to  
6 Covered Products manufactured, distributed, and/or sold by Settling Defendant.

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

15     **3.     INJUNCTIVE RELIEF**

16           3.1     **Reformulation of Covered Products.** Upon the Effective Date, Settling  
17 Defendant shall not purchase, manufacture, ship, sell, or offer for sale Covered Products that will  
18 be sold or offered for sale in California that exceed the following acrylamide concentration levels  
19 (the “Reformulation Levels”), such concentration to be determined by use of a test performed by  
20 an accredited laboratory using either GC/MS (Gas Chromatograph/Mass Spectrometry), LC-  
21 MS/MS (Liquid Chromatograph-Mass Spectrometry), or any other testing method agreed upon  
22 by the Parties:

23                   3.1.1     For Sliced Chips:

24                           3.1.1.1     The average acrylamide concentration shall not exceed 281 parts  
25 per billion (“ppb”) by weight (the “Sliced Chips Average Level”). The Sliced Chips Average  
26 Level is determined by randomly selecting and testing at least 1 sample each from 5 different lots  
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1 of a particular type of Covered Product that is a Sliced Chip (or the maximum number of lots  
2 available for testing if less than 5) during a testing period of at least 60 days.

3 3.1.1.2 The acrylamide concentration of any individual unit of Sliced  
4 Chips shall not exceed 350 ppb by weight, based on a representative composite sample taken  
5 from the individual unit being tested (the “Sliced Chips Unit Level”).

6 3.1.2 For Extruded Products:

7 3.1.2.1 The average acrylamide concentration shall not exceed 350 ppb by  
8 weight (the “Extruded Products Average Level”). The Extruded Products Average Level is  
9 determined by randomly selecting and testing at least 1 sample each from 5 different lots of a  
10 particular type of Covered Product that is an Extruded Product (or the maximum number of lots  
11 available for testing if less than 5) during a testing period of at least 60 days.

12 3.1.2.2 The acrylamide concentration of any individual unit of Extruded  
13 Products shall not exceed 490 ppb by weight, based on a representative composite sample taken  
14 from the individual unit being tested (the “Extruded Products Unit Level”).

15 3.2 **Clear and Reasonable Warnings.** A Covered Product purchased, manufactured,  
16 shipped, sold or offered for sale by Settling Defendant after the Effective Date may, as an  
17 alternative to meeting the Reformulation Levels set forth in Section 3.1, be sold or offered for  
18 sale in California with a Clear and Reasonable Warning that complies with the provisions of this  
19 Section 3.2. A Clear and Reasonable Warning under this Agreement shall state:

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

22  
23 The word “**WARNING**” shall be displayed in all capital letters and bold print. This warning  
24 statement shall be prominently displayed on the Covered Product, on the packaging of the  
25 Covered Product, or on a placard or sign provided that the statement is displayed with such  
26 conspicuousness, as compared with other words, statements or designs as to render it likely to be  
27 seen, read and understood by an ordinary individual prior to sale. If the warning statement is  
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1 displayed on the Covered Product’s label, it must be set off from other surrounding information  
2 and enclosed in a text box. If the warning statement is displayed on a placard or sign where the  
3 Covered Product is offered for sale, the warning placard or sign must enable an ordinary  
4 individual to easily determine which specific Covered Products the warning applies to, and to  
5 differentiate between that Covered Product and other products to which the warning statement  
6 does not apply. For internet, catalog or any other sale where the consumer is not physically  
7 present, the warning statement shall be displayed in such a manner that it is likely to be read and  
8 understood by an ordinary individual prior to the authorization of or actual payment. A Clear and  
9 Reasonable Warning under this Consent Judgment shall otherwise comply with Title 27,  
10 California Code of Regulations, Article 6, Section 25600 *et seq.*

11           **3.3 Alternative Compliance.** As an alternative to complying with Section 3.1 or  
12 Section 3.2, Settling Defendant may sell Covered Products that do not meet the Reformulation  
13 Levels without a Clear and Reasonable Warning provided that such sales made after the Effective  
14 Date are only to entities that have represented to Settling Defendant that they will not sell or  
15 distribute the Covered Products within the State of California or, in the alternative, will not sell or  
16 distribute the Covered Products without providing a Clear and Reasonable Warning in  
17 compliance with Section 3.2 above, and further provided that Settling Defendant has provided  
18 notice to all entities to which it sells such Covered Products that are reasonably known to sell or  
19 distribute the Covered Products to California consumers that the Covered Products are not  
20 labeled for sale in California. To the extent that Settling Defendant has knowledge that an entity  
21 is nonetheless selling or offering for sale Covered Products that do not meet the Reformulation  
22 Level to consumers in the State of California after the Effective Date without a Clear and  
23 Reasonable Warning, Settling Defendant may not thereafter sell Covered Products that do not  
24 meet the Reformulation Level to that entity without a Clear and Reasonable Warning.

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1     **4.     ENFORCEMENT**

2             4.1     **General Enforcement Provisions.** CEH may, by motion or application for an  
3 order to show cause before this Court, enforce the terms and conditions contained in this Consent  
4 Judgment. Any action to enforce alleged violations of Section 3 by Settling Defendant shall be  
5 brought exclusively pursuant to this Section 4, and be subject to the meet and confer requirement  
6 of Section 4.2.4 if applicable.

7             4.2     **Enforcement of Reformulation Commitment.**

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

1 permission of Settling Defendant. Any motions or pleadings or any other court filings that may  
2 reveal information designated as competitively sensitive confidential business information  
3 pursuant to this Section shall be submitted in accordance with California Rules of Court 8.46 and  
4 2.550, et seq. This provision shall sunset seven years after the Effective Date.

5 4.2.2 Notice of Violation. In the event that CEH purchases a Covered Product  
6 in California that was manufactured, distributed or sold by Settling Defendant and that has a best-  
7 by or sell-by (or equivalent) date more than 6 months after the Effective Date, and for which  
8 CEH has laboratory test results showing that the Covered Product exceeds the applicable Unit  
9 Level, and which lacks a Clear and Reasonable Warning that complies with Section 3.2, CEH  
10 may issue a Notice of Violation pursuant to this Section.

11 4.2.3 Service of Notice of Violation and Supporting Documentation.

12 4.2.3.1 Subject to Section 4.2.3, the Notice of Violation shall be sent to the  
13 person(s) identified in Section 8.2 to receive notices for Settling Defendant, and must be served  
14 within sixty (60) days of the later of the date the Covered Product at issue was purchased or  
15 otherwise acquired by CEH or the date that CEH can reasonably determine that the Covered  
16 Product at issue was manufactured, shipped, sold, or offered for sale by Settling Defendant,  
17 provided, however, that CEH may have up to an additional sixty (60) days to send the Notice of  
18 Violation if, notwithstanding CEH's good faith efforts, the test data required by Section 4.2.3.2  
19 below cannot be obtained by CEH from its laboratory before expiration of the initial sixty (60)  
20 day period.

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

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

11 4.2.4.1 If a Notice of Violation is contested because the Settling Defendant  
12 has complied with the Clear and Reasonable Warning requirement included in Section 3.3, the  
13 Notice of Election shall include all documents upon which Settling Defendant is relying on to  
14 demonstrate compliance. If alternatively, a Notice of Violation is contested on other grounds the  
15 Notice of Election shall include all documents upon which Settling Defendant is relying to  
16 contest the alleged violation, including all available test data. If Settling Defendant or CEH later  
17 acquires additional test or other data regarding the alleged violation during the meet and confer  
18 period described in Section 4.2.5, it shall notify the other Party and promptly provide all such  
19 data or information to the Party unless either the Notice of Violation or Notice of Election has  
20 been withdrawn. If a Notice of Violation is sent on the grounds that a Covered Product does not  
21 include a warning in compliance with the language specified in Section 3.2, Settlement  
22 Defendant may provide documents evidencing that the Covered Product was sold in California  
23 with a clear and reasonable warning that satisfied Title 27, California Code of Regulations,  
24 Article 6, Section 25600 *et seq.* which shall be deemed acceptable for purposes of this Consent  
25 Judgement.

26 4.2.5 Meet and Confer. If a Notice of Violation is contested, CEH and Settling  
27 Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of  
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1 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw  
2 the original Notice of Election contesting the violation and serve a new Notice of Election to not  
3 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay  
4 \$2,500 in addition to any payment required under this Consent Judgment. At any time, CEH may  
5 withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the result shall be  
6 as if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of  
7 Violation results within thirty (30) days of a Notice of Election to contest, CEH may file an  
8 enforcement motion or application pursuant to Section 4.1. In any such proceeding, CEH may  
9 seek whatever fines, costs, penalties, attorneys' fees, or other remedies are provided by law for an  
10 alleged failure to comply with the Consent Judgment.

11                   4.2.6    Non-Contested Notices. If Settling Defendant elects to not contest the  
12 allegations in a Notice of Violation, it shall undertake corrective action(s) and make payments, if  
13 any, as set forth below.

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

3 4.2.6.2 If the Notice of Violation is the first, second, third, or fourth Notice  
4 of Violation received by Settling Defendant under Section 4.2.1 that was not successfully  
5 contested or withdrawn, then Settling Defendant shall pay \$15,000 for each Notice of Violation.  
6 If Settling Defendant has received more than four (4) Notices of Violation under Section 4.2.1  
7 that were not successfully contested or withdrawn, then Settling Defendant shall pay \$25,000 for  
8 each Notice of Violation. If Settling Defendant produces with its Notice of Election test data for  
9 the Covered Product that: (i) was conducted prior to the date CEH gave Notice of Violation;  
10 (ii) was conducted on the same or same type of Covered Product; and (iii) demonstrates  
11 acrylamide levels below the applicable Unit Level, then any payment under this Section shall be  
12 reduced by 100 percent (100%) for the first Notice of Violation, by seventy-five percent (75%)  
13 for the second Notice of Violation, and by fifty percent (50%) for any subsequent Notice of  
14 Violation. In no case shall Settling Defendant be obligated to pay more than \$100,000 for all  
15 Notices of Violation not successfully contested or withdrawn in any calendar year irrespective of  
16 the total number of Notices of Violation issued.

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

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

3 **5. PAYMENTS**

4 5.1 **Payments by Settling Defendant.** Settling Defendant shall pay the total sum of  
5 \$75,000 as a settlement payment as further set forth in this Section according to the following  
6 schedule: (a) on or before February 1, 2018: \$25,000; (b) on or before April 1, 2018: \$25,000;  
7 and (c) on or before July 15, 2018: \$25,000.

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

17 5.2.1 \$10,000 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).  
18 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §  
19 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health  
20 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty  
21 payment for \$7,500 shall be made payable to OEHHA and associated with taxpayer identification  
22 number 68-0284486. This total amount shall be made in three payments of \$2,500 each payable  
23 on or before February 1, 2018, on or before April 1, 2018, and on or before July 15, 2018 and  
24 delivered as follows:  
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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

For Non-United States Postal Service Delivery:

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

The CEH portion of the civil penalty payment for \$2,500 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This total amount shall be made in three payments as follows: (a) on or before February 1, 2018: \$833.35; (b) on or before April 1, 2018: \$833.35; and on or before July 15, 2018 \$833.30, each of which payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.2 \$7,500 as an Additional Settlement Payment (“ASP”) to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH intends to restrict use of the ASPs received from this Consent Judgment to the following purposes: the funds will be placed in CEH’s Toxics in Food Fund and used to support CEH programs and activities that seek to educate the public about acrylamide and other toxic chemicals in food, to work with the food industry and agriculture interests to reduce exposure to acrylamide and other toxic chemicals in food, and to thereby reduce the public health impacts and risks of exposure to acrylamide and other toxic chemicals in food sold in California. CEH shall obtain and maintain adequate records to document that ASPs are spent on these activities and CEH agrees to provide such documentation to the Attorney General within thirty (30) days of any request from the Attorney General. The payment pursuant to this Section shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-

1 3251981. The total amount under this section shall be made in three payments of \$2,500 each  
2 payable on or before February 1, 2018, on or before April 1, 2018, and on or before July 15,  
3 2018, each of which payments shall be delivered to Lexington Law Group, 503 Divisadero Street,  
4 San Francisco, CA 94117.

5           5.2.3     \$57,500 as a reimbursement of a portion of CEH's reasonable attorneys'  
6 fees and costs. The attorneys' fees and cost reimbursement shall be allocated as follows: (a)  
7 \$48,665 payable to the Lexington Law Group and associated with taxpayer identification number  
8 94-3317175; and (b) \$8,835 payable to the Center for Environmental Health and associated with  
9 taxpayer identification number 94-3251981. The total amounts due under this section shall be  
10 made in six payments delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,  
11 CA 94117 as follows: (a) \$16,221.65 payable to the Lexington Law Group on or before February  
12 1, 2018; (b) \$2,945 payable to the Center For Environmental Health on or before February 1,  
13 2018; (c) \$16,221.65 payable to the Lexington Law Group on or before April 1, 2018; (d) \$2,945  
14 payable to the Center For Environmental Health on or before April 1, 2018; (e) \$16,221.70  
15 payable to the Lexington Law Group on or before July 15, 2018; (f) \$2,945 payable to the Center  
16 For Environmental Health on or before July 15, 2018.

17 **6. MODIFICATION AND DISPUTE RESOLUTION**

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

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

25 **7. CLAIMS COVERED AND RELEASE**

26           7.1     Provided that Settling Defendant complies in full with its obligations under  
27 Section 5 hereof, this Consent Judgment is a full, final and binding resolution between CEH on  
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1 behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries,  
2 affiliated entities that are under common ownership, directors, officers, employees, agents,  
3 shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to  
4 which Settling Defendant directly or indirectly distributes or sells Covered Products, including  
5 but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and  
6 licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on  
7 failure to warn about alleged exposure to acrylamide contained in Covered Products that were  
8 sold, distributed, or offered for sale by Settling Defendant prior to the Effective Date.

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

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

23 **8.     PROVISION OF NOTICE**

24       8.1     When CEH is entitled to receive any notice under this Consent Judgment, the  
25 notice shall be sent by first class and electronic mail to:  
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Howard Hirsch  
Lexington Law Group  
503 Divisadero Street  
San Francisco, CA 94117  
hhirsch@lexlawgroup.com

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

Matthew R. Dildine  
Dowling Aaron Incorporated  
8080 N. Palm Ave., Third Floor  
Fresno, CA 93711  
mdildine@dowlingaaron.com

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

**9. COURT APPROVAL**

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

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

**10. GOVERNING LAW AND CONSTRUCTION**

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

**11. ATTORNEYS' FEES**

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

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

1 **12. ENTIRE AGREEMENT**

2 12.1 This Consent Judgment contains the sole and entire agreement and understanding  
3 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
4 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
5 and therein. There are no warranties, representations, or other agreements between the Parties  
6 except as expressly set forth herein. No representations, oral or otherwise, express or implied,  
7 other than those specifically referred to in this Consent Judgment have been made by any Party  
8 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,  
9 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically  
10 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the  
11 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,  
12 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
13 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
14 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
15 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 authorized  
21 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
22 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

24 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
25 against any other entity on terms that are different than those contained in this Consent Judgment.  
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1 **16. EXECUTION IN COUNTERPARTS**

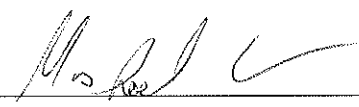
2 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
3 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
4 constitute one document.

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

6 Dated: \_\_\_\_\_  
7 \_\_\_\_\_  
8 Judge of the Superior Court

8 **IT IS SO STIPULATED:**

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<p>Dated: _____, 2017</p>	<p><b>CENTER FOR ENVIRONMENTAL HEALTH</b></p> <p></p> <p>_____ Signature</p> <p><i>Michael Green</i></p> <p>_____ Printed Name</p> <p><i>Chief Executive officer</i></p> <p>_____ Title</p>
<p>Dated: _____, 2017</p>	<p><b>WARNOCK FOOD PRODUCTS, INC.</b></p> <p>_____ Signature</p> <p>_____ Printed Name</p> <p>_____ Title</p>

1 **16. EXECUTION IN COUNTERPARTS**

2 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
3 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
4 constitute one document.

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

6 Dated: 4/18/18 IOANA PETROU  
7 Judge of the Superior Court

8 **IT IS SO STIPULATED:**

Dated: _____, 2017	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>  _____ Signature  _____ Printed Name  _____ Title
Dated: _____, 2017	<b>WARNOCK FOOD PRODUCTS, INC.</b>  <u>Kraig Rawls</u> Signature  <u>Kraig Rawls</u> Printed Name  <u>VP</u> Title

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