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Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH, a non-profit corporation,

Plaintiff,

v.

THINK FOOD GROUP LLC, et al.

Defendants.

Case No. RG 17-881940

NOTICE OF ENTRY OF ORDER AND AMENDED CONSENT JUDGMENT

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

Please take notice that on July 28, 2020, the Court entered the following documents:

1. Order Granting Plaintiff's Motion for Court Approval and Entry of Amended Consent Judgment as to Defendants Shearer's Foods, LLC, and Barrel O'Fun Snack Foods Co., LLC, a true and correct copy of which is attached hereto as Exhibit 1.
2. Amended Consent Judgment as to Shearer's Foods, LLC, and Barrel O'Fun Snack Foods Co., LLC, a true and correct copy of which is attached hereto as Exhibit 2.

Dated: July 29, 2020

Respectfully submitted,

LEXINGTON LAW GROUP

Joseph Mann
Attorney for Plaintiff
Center for Environmental Health

Exhibit 1

20907611

FILED
ALAMEDA COUNTY
JUL 28 2020
CLERK OF THE SUPERIOR COURT
By _____ Deputy

LEXINGTON LAW GROUP
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CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,

Plaintiff,

v.

THINK FOOD GROUP LLC, *et al.*,

Defendants.

Case No. RG 17-881940

ASSIGNED FOR ALL PURPOSES TO:
The Hon. Winifred Y. Smith, Dept. 21

~~[PROPOSED]~~ ORDER GRANTING PLAINTIFF'S MOTION FOR COURT APPROVAL AND ENTRY OF AMENDED CONSENT JUDGMENT

(Health & Safety Code § 25249.7(f))

Date: July 17, 2020
Time: 10:00 a.m.
Dept.: 21

Reservation Number: R-2187044

Complaint Filed: November 9, 2017
Trial Date: October 23, 2020

DOCUMENT PREPARED ON RECYCLED PAPER

On July 17, 2020, at 10:00 a.m., Plaintiff Center for Environmental Health's ("CEH") Motion for Court Approval and Entry of Amended Consent Judgment as to Defendants Shearer's Foods, LLC and Barrel O'Fun Snack Foods Co., LLC came on regularly for hearing before this Court in Department 21, the Honorable Winifred Y. Smith presiding. After full consideration of the points and authorities and related pleadings submitted, the Court rules as follows:

IT IS HEREBY ORDERED that Plaintiff's Motion for Court Approval and Entry of Amended Consent Judgment is GRANTED. Pursuant to and in accordance with Health & Safety Code § 25249.7(f)(4), the Court makes the following findings with respect to the Amended Consent Judgment between CEH and Defendants Shearer's Foods, LLC and Barrel O'Fun Snack Foods Co., LLC:

1. The Amended Consent Judgment ensures compliance with the Proposition 65 warning requirement;
2. The attorneys' fee award in the Amended Consent Judgment is reasonable under California law; and
3. The civil penalty and additional settlement payment in lieu of civil penalty in the Amended Consent Judgment are reasonable based on the criteria listed in Health & Safety Code § 25249.7(b)(2).

In light of the findings set forth herein, the Amended Consent Judgment is hereby APPROVED.

IT IS SO ORDERED.

Dated: July 28, 2020

Winifred Y. Smith
JUDGE OF THE SUPERIOR COURT

Exhibit 2

20907610

FILED
ALAMEDA COUNTY
JUL 28 2020
CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH, Plaintiff, v. THINK FOOD GROUP LLC, *et al.*, Defendants.	Case No. RG 17-881940 **[PROPOSED] AMENDED CONSENT JUDGMENT AS TO SHEARER'S FOODS, LLC AND BARREL O'FUN SNACK FOODS CO., LLC**

Upon entry, this Amended Consent Judgment supersedes in its entirety the Consent Judgment entered in this case on September 12, 2018 as to Shearer's Foods, LLC and Barrel O'Fun Snack Foods Co., LLC (the "Consent Judgment"). Until this Amended Consent Judgment is entered by the Court, the Consent Judgment shall remain in effect.

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1. DEFINITIONS

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

1.2 "Covered Products" means: (a) Kettle Potato Chips manufactured by Shearer's Foods, LLC or Barrel O'Fun Snack Foods Co., LLC and offered for sale in California by Walgreen Co., McClure's Pickles LLC, Wholesome Goodness, LLC, or Target Corporation; and (b) Kettle Potato Chips and Potato Chips manufactured by Shearer's Foods, LLC or Barrel O'Fun Snack Foods Co., LLC and offered for sale in California by Walmart, Inc. under the Great Value brand.

1.3 The "Labeled Covered Products" means: (a) Kettle Potato Chips manufactured by Shearer's Foods, LLC or Barrel O'Fun Snack Foods Co., LLC and offered for sale in California by Target Corporation; and (b) Kettle Potato Chips and Potato Chips manufactured by Shearer's Foods, LLC or Barrel O'Fun Snack Foods Co., LLC and offered for sale in California by Walmart, Inc. under the Great Value brand.

1.4 "Potato Chips" means cooked sliced potato chips.

1.5 "Kettle Potato Chips" means kettle-cooked sliced potato chips.

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

2. INTRODUCTION

2.1 The Parties to this Amended Consent Judgment are the Center for Environmental Health, a California non-profit corporation ("CEH") on the one hand, and Shearer's Foods, LLC and Barrel O'Fun Snack Foods Co., LLC ("Settling Defendants") on the other hand. CEH and Settling Defendants (the "Parties") enter into this Amended Consent Judgment to settle all claims asserted by CEH against Settling Defendants and the Downstream Defendant Releases as set forth in the Complaint and all previous versions thereof.

2.2 On or about March 20, 2017 and March 26, 2019, CEH provided 60-day Notices of Violation of Proposition 65 to the California Attorney General, the District Attorneys of every

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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 "Notices").

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

2.4 On November 9, 2017, CEH filed the original complaint in the above-captioned matter, naming Settling Defendants as original defendants. On December 22, 2017, CEH filed the First Amended Complaint, which added additional defendants to the action but did not alter CEH's allegations against Settling Defendants. On December 19, 2019, CEH filed the Complaint reasserting certain claims against Settling Defendants.

2.5 For purposes of this Amended Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over Settling Defendants as to the acts alleged in the Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Amended Consent Judgment as a full and final resolution of all claims which were or could have been raised in the Complaint based on the facts alleged therein and in the Notices with respect to Covered Products manufactured, distributed, and/or sold by Settling Defendants.

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

disputed in this action.

3. INJUNCTIVE RELIEF

3.1 **Reformulated Covered Products.** Upon the Effective Date, Settling Defendants shall not purchase, manufacture, ship, sell, or offer for sale any Covered Products that will be sold or offered for sale in California that exceed the following acrylamide concentration levels, such concentration to 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:

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

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

3.2 **Clear and Reasonable Warnings.** A Labeled Covered Product purchased, manufactured, shipped, sold or offered for sale by Settling Defendants after the Effective Date may, as an alternative to meeting the Reformulation Levels set forth in Section 3.1, be sold or offered for sale in California with a Clear and Reasonable Warning that complies with the provisions of this Section 3.2 and with the provisions of Title 27 California Code of Regulations Sections 25601 through 25607 [Operative August 30, 2018]. A Clear and Reasonable Warning under this Amended Consent Judgment shall state:

> **WARNING:** Consuming this product can expose you to chemicals including acrylamide, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

The word "**WARNING**" shall be displayed in all capital letters and bold print. This warning statement shall be prominently displayed on the label of the Labeled Covered Product or otherwise in compliance with Section 25601(c), provided that the warning statement is displayed with such conspicuousness, as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. If the warning statement is displayed on the Labeled Covered Product's label, it must be set off from other surrounding information and enclosed in a box. For internet purchases, the warning statement shall be provided by including either the warning statement or a clearly marked hyperlink using the word "**WARNING**" on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. A Clear and Reasonable Warning may only be provided for Labeled Covered Products that Settling Defendants reasonably believe do not meet the Reformulation Levels.

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 Amended 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 or Clear and Reasonable Warnings Commitment.**

4.2.1.1 Notice of Violation. In the event that CEH purchases a Covered Product in California that was sold or offered for sale by a Settling Defendant with a best-by or sell-by (or equivalent) date more than nine (9) months after the Effective Date, and for which CEH has laboratory test results showing that the Covered Product exceeds the applicable Unit Level (and, for Labeled Covered Products, is without a Clear and Reasonable Warning as set forth in Section 3.2), CEH may issue a Notice of Violation pursuant to this Section.

4.2.2 Service of Notice of Violation and Supporting Documentation.

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

4.2.3 Notice of Election of Response. No more than sixty (60) days after effectuation of service of a Notice of Violation, Settling Defendants shall provide written notice to CEH whether they elect to contest the allegations contained in a Notice of Violation ("Notice of Election"). Failure to provide a Notice of Election within sixty (60) days of effectuation of service of a Notice of Violation shall be deemed an election to contest the Notice of Violation. Upon notice to CEH, Settling Defendants may have up to an additional sixty (60) days to elect if, notwithstanding Settling Defendants' good faith efforts, Settling Defendants are unable to verify the test data provided by CEH or otherwise verify compliance with Section 3.2 before expiration of the initial sixty (60) day period.

4.2.3.1 If a Notice of Violation is contested, the Notice of Election shall include all documents upon which Settling Defendants are relying to contest the alleged violation,

including, if applicable, all available test data for the Covered Product for the prior twelve (12) months. If a Settling Defendant or CEH later acquires additional test or other data regarding an alleged violation for a Covered Product during the meet and confer period described in Section 4.2.4, it shall notify the other Party and promptly provide all such data or information to the Party unless either the Notice of Violation or Notice of Election has been withdrawn.

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

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

4.2.5.1 Settling Defendants shall include in their Notice of Election a detailed description with supporting documentation of the corrective action(s) that they have undertaken or propose to undertake to address the alleged violation. Any correction shall, at a minimum, provide reasonable assurance that all Covered Products having the same lot number as that of the Covered Product identified in CEH's Notice of Violation (the "Noticed Covered Products") will not be thereafter sold in California or offered for sale to California customers by Settling Defendants absent compliance with Section 3.2, and that Settling Defendants have sent

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instructions to any retailers or customers that offer the Noticed Covered Products for sale to cease offering the Noticed Covered Products for sale to California consumers absent compliance with Section 3.2, or to return all such Noticed Covered Products to Settling Defendants. Settling Defendants shall keep for a period of one year and make available to CEH upon reasonable notice (which shall not exceed more than one request per year) for inspection and copying records of any correspondence regarding the foregoing.

4.2.5.2 If the Notice of Violation is based on a violation of the Unit Level with respect to a single Covered Product, Settling Defendants may be excused from the recall obligation described in the foregoing (but not the monetary payments, if any, required by this Section 4) if Settling Defendants produce test results and other evidence that: (1) demonstrates that the acrylamide level found by CEH in the unit alleged to be in violation is an aberration; and (2) otherwise provides reasonable assurance that the remainder of the Noticed Covered Products, aside from the unit alleged to be in violation, comply with the applicable reformulation levels in Section 3.1 or applicable warning requirements in Section 3.2 of this Amended Consent Judgment.

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

4.2.5.4 If the Notice of Violation is the first, second, third, or fourth Notice of Violation received by Settling Defendants under Section 4.2.1 that was not successfully contested or withdrawn, then Settling Defendants shall pay $15,000 for each Notice of Violation. If Settling Defendants have received more than four (4) Notices of Violation under Section 4.2.1 that were not successfully contested or withdrawn, then Settling Defendants shall pay $25,000 for each Notice of Violation. If Settling Defendants produce with their Notice of Election test data for the Covered Product that: (i) was conducted prior to the date CEH gave Notice of Violation;

(ii) was conducted on the same type of Covered Product; and (iii) demonstrates acrylamide levels below the applicable Unit Level, then any payment under this Section shall be reduced by 100 percent (100%) for the first Notice of Violation, by seventy-five percent (75%) for the second Notice of Violation, and by fifty percent (50%) for any subsequent Notice of Violation. In no case shall Settling Defendants be obligated to pay more than $100,000 for all Notices of Violation not successfully contested or withdrawn in any calendar year irrespective of the total number of Notices of Violation issued.

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

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

5. PAYMENTS

5.1 **Payments by Settling Defendants.** In addition to the monetary amounts previously paid pursuant to the original Consent Judgment, within ten (10) calendar days of the Effective Date, Settling Defendants shall pay the total additional sum of $110,000 as a settlement payment as further set forth in this Section.

5.2 **Allocation of Payments.** The total settlement amount shall be paid in five (5) separate checks in the amounts specified below and delivered as set forth below. Any failure by

Settling Defendants to comply with the payment terms herein shall be subject to a stipulated late fee to be paid by Settling Defendants to CEH in the amount of $100 for each day the full payment is not received after the payment due date set forth in Section 5.1. The late fees required under this Section shall be recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 4 of this Amended Consent Judgment. The funds paid by Settling Defendants shall be allocated as set forth below between the following categories and made payable as follows:

5.2.1 $14,800 as a civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment for $11,100 shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

For United States Postal Service Delivery:

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

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 $3,700 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.2 $11,100 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 Amended 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 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.3 $84,100 as a reimbursement of a portion of CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made in two separate checks as follows: (a) $71,065 payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b) $13,035 payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. These payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

6. MODIFICATION AND DISPUTE RESOLUTION

6.1 **Modification.** This Amended Consent Judgment may be modified from time to time by express written agreement of the Parties, with the approval of the Court, or by an order of this Court upon motion by one or more of the Parties and in accordance with law or equity. In the event that new legislation or regulations relating to the acrylamide content of the Covered Products is adopted on either the federal or California state level, after meeting and conferring pursuant to Section 6.2, below, either CEH or the Settling Defendants may seek a modification to conform the requirements of this Amended Consent Judgment to such new requirements and in

accordance with law.

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

7. CLAIMS COVERED AND RELEASE

7.1 Provided that Settling Defendants comply in full with their obligations under Section 5 hereof, this Amended 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 sold, distributed, or offered for sale by Settling Defendants prior to the Effective Date.[1]

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 public interest regarding the failure to warn about exposure to acrylamide arising in connection with Covered Products manufactured, distributed or sold by Settling Defendants prior to the Effective Date.

[1] For purposes of this Amended Consent Judgment, Downstream Defendant Releases include without limitation Target Corporation, Walgreen Co., KeHE Distributors, Inc., KeHE Enterprises, KeHE Distributors, LLC, Wholesome Goodness, LLC, Sprouts Farmers Market, Inc., McClure's Pickles LLC and Walmart, Inc.

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

8. PROVISION OF NOTICE

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

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

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

George W. Hawk, Jr.
General Counsel
Shearer's Foods, LLC
100 Lincoln Way East
Massillon, Ohio 44646
georgehawk@shearers.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 Amended Consent Judgment shall become effective upon the date signed by CEH and Settling Defendants, whichever is later, provided however, that CEH shall prepare and file a Motion for Approval of this Amended Consent Judgment and Settling Defendants shall support entry of this Amended Consent Judgment by the Court.

9.2 If this Amended 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 Amended 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 Amended Consent Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs.

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

12. ENTIRE AGREEMENT

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

13. RETENTION OF JURISDICTION

13.1 This Court shall retain jurisdiction of this matter to implement or modify the

Amended Consent Judgment.

14. AUTHORITY TO STIPULATE TO AMENDED CONSENT JUDGMENT

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

15. NO EFFECT ON OTHER SETTLEMENTS

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

16. EXECUTION IN COUNTERPARTS

16.1 The stipulations to this Amended 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: July 28, 2020

Judge of the Superior Court

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IT IS SO STIPULATED:

Dated: 2/7, 2020	**CENTER FOR ENVIRONMENTAL HEALTH** Signature Michael Green Printed Name CEO Title
Dated: _____, 2020	**SHEARER'S FOODS, LLC** Signature Printed Name Title
Dated: _____, 2020	**BARREL O'FUN SNACK FOODS CO., LLC** Signature Printed Name Title

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IT IS SO STIPULATED:

Dated: _____, 2020	**CENTER FOR ENVIRONMENTAL HEALTH** _____ Signature _____ Printed Name _____ Title
Dated: January 28, 2020	**SHEARER'S FOODS, LLC** _____ Signature Fritz Kohmann Printed Name CFO Title
Dated: January 28, 2020	**BARREL O'FUN SNACK FOODS CO., LLC** _____ Signature Fritz Kohmann Printed Name CFO Title

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PROOF OF SERVICE

I, Owen Sutter, declare:

I am a citizen of the United States and employed in the County of San Francisco, State of California. I am over the age of eighteen (18) years and not a party to this action. My business address is 503 Divisadero Street, San Francisco, CA 94117 and my email address is osutter@lexlawgroup.com.

On July 29, 2020, I served the following document(s) on all interested parties in this action by placing a true copy thereof in the manner and at the addresses indicated below:

NOTICE OF ENTRY OF ORDER AND AMENDED CONSENT JUDGMENT

☐ **BY MAIL**: I am readily familiar with the firm's practice for collecting and processing mail with the United States Postal Service ("USPS"). Under that practice, mail would be deposited with USPS that same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. On this date, I placed sealed envelopes containing the above mentioned documents for collection and mailing following my firm's ordinary business practices.

☐ **BY FACSIMILE**: I caused all pages of the document(s) listed above to be transmitted via facsimile to the fax number(s) as indicated and said transmission was reported as complete and without error.

☒ **BY ELECTRONIC MAIL**: I transmitted a PDF version of the document(s) listed above via email to the email address(es) indicated on the attached service list [or noted above] before 5 p.m. on the date executed.

Please see attached service list

☐ **BY PERSONAL DELIVERY**: I placed all pages of the document(s) listed above in a sealed envelope addressed to the party(ies) listed above, and caused such envelope to be delivered by hand to the addressee(s) as indicated.

☐ **BY OVERNIGHT DELIVERY**: I deposited such document(s) in a box or other facility regularly maintained by FedEx, or delivered such document(s) to a courier or driver authorized by FedEx, with delivery fees paid or provided for, and addressed to the person(s) being served below.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 29, 2020 at San Francisco, California.

Owen Sutter

SERVICE LIST
CEH v. Think Food Group LLC, et al.
Case No. RG 17-881940

ADDRESS	**PARTY**
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