

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ENDORSED  
FILED  
ALAMEDA COUNTY**

DEC 03 2019

CLERK OF THE SUPERIOR COURT

*Alanna Harmon*  
Deputy

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

CENTER FOR ENVIRONMENTAL HEALTH, )

Plaintiff, )

v. )

MRS. GOOCH'S NATURAL FOOD )  
MARKETS, INC., *et al.*, )

Defendants. )

Case No. RG 17-852777

[PROPOSED] CONSENT JUDGMENT  
AS TO LASSONDE PAPPAS AND  
COMPANY, INC.

**1. DEFINITIONS**

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

1.2 "Covered Products" means prune juice. An initial list of the Covered Products is attached hereto as Exhibit A.

1           1.3           “Organic Covered Products” means prune juice sourced exclusively from  
2 organic-grown prunes. Organic Covered Products includes only items listed on Exhibit A that  
3 have “organic” in their product description.

4           1.4           “Effective Date” means the date on which notice of entry of this Consent  
5 Judgment by the Court is served upon Settling Defendant.

6           **2. INTRODUCTION**

7           2.1           The Parties to this Consent Judgment are the Center for Environmental Health,  
8 a California non-profit corporation (“CEH”) and Lassonde Pappas and Company, Inc. (formerly  
9 known as Clement Pappas and Company, Inc.) (“Settling Defendant”). CEH and Settling  
10 Defendant (collectively, the “Parties”) enter into this Consent Judgment to settle certain claims  
11 asserted by CEH against Settling Defendant as set forth in the Complaint.

12           2.2           On or about July 7, 2017, CEH provided a 60-day Notice of Violation of  
13 Proposition 65 to the California Attorney General, the District Attorneys of every county in  
14 California, the City Attorneys of every California city with a population greater than 750,000,  
15 and to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing  
16 persons in California to acrylamide contained in Covered Products without first providing a clear  
17 and reasonable Proposition 65 warning (the “Notice”).

18           2.3           Settling Defendant is a corporation or other business entity that manufactures,  
19 distributes, sells, or offers for sale Covered Products that are sold in the State of California or has  
20 done so at times relevant to the Complaint. Some of the Covered Products sold by Settling  
21 Defendant are labeled as organic under the National Organic Program (“NOP”). Under the NOP,  
22 Settling Defendant is limited in the use of certain enzymes that the Parties believe could  
23 otherwise be used to further reduce acrylamide levels in the Organic Covered Products.

24           2.4           On March 13, 2017, CEH filed the Complaint in the above-captioned matter.  
25 On or about September 22, 2017, CEH filed an amendment to the Complaint pursuant to Cal.  
26 Civ. Pro. § 474, naming Settling Defendant as a defendant.

27           2.5           For purposes of this Consent Judgment only, the Parties stipulate that this  
28

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

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

15 **3. INJUNCTIVE RELIEF**

16 3.1 **Reformulation of Covered Products.** Commencing on the Effective Date,  
17 Settling Defendant shall not purchase, manufacture, ship, sell, or offer for sale any Covered  
18 Product that will be sold or offered for sale in California that contains a concentration of more  
19 than the following parts per billion (“ppb”) levels of acrylamide by weight as measured at the  
20 point at which the Covered Product is bottled by Settling Defendant into bottles or other  
21 containers to be offered for sale to California consumers (the “Reformulation Level”):

22 3.1.1 For Organic Covered Products:

23 3.1.1.1 The acrylamide concentration of any individual unit of Covered  
24 Products shall not exceed 450 ppb (the “Organic Unit Level”), based on a representative  
25 composite sample taken from the individual unit being tested.

26 3.1.1.2 The average acrylamide concentration shall not exceed 350 ppb  
27 (the “Organic Unit Average Level”). The Organic Unit Average Level is determined by

28

1 randomly selecting and testing at least one sample each from at least five and up to 30 different  
2 lots of Organic Covered Products (or the maximum number of lots available for testing if fewer  
3 than five) during a testing period of at least 60 days. The mean and standard deviation shall be  
4 calculated using the sampling data. Any data points that are more than three standard deviations  
5 outside the mean shall be discarded once, and the mean and standard deviation recalculated using  
6 the remaining data points. The mean determined in accordance with this procedure shall be  
7 deemed the “Organic Unit Average Level.”

8 3.1.2 For all other Covered Products:

9 3.1.2.1 For 100% Single Strength Covered Products (Not Made from  
10 Concentrate): the acrylamide concentration of any individual unit of Covered Products shall not  
11 exceed 250 ppb, based on a representative composite sample taken from the individual unit being  
12 tested.

13 3.1.2.2 For Covered Products Made in Part from Single Strength and in  
14 Part from Concentrate: the acrylamide concentration of any individual unit of Covered Products  
15 shall not exceed 200 ppb, based on a representative composite sample taken from the individual  
16 unit being tested.

17 3.1.2.3 For Covered Products Made only from Concentrate: the acrylamide  
18 concentration of any individual unit of Covered Products shall not exceed 150 ppb, based on a  
19 representative composite sample taken from the individual unit being tested.

20 3.2 The acrylamide concentration shall be determined by use of a test performed by an  
21 accredited laboratory using either GC/MS (Gas Chromatograph/Mass Spectrometry), LC-MS/MS  
22 (Liquid Chromatograph-Mass Spectrometry), or any other testing method agreed upon by the  
23 Parties.

24 3.3 For avoidance of doubt, Covered Products either purchased, manufactured,  
25 shipped or sold by Settling Defendant prior to the Effective Date are not subject to the  
26 Reformulation Levels, even if such products are sold in California or to California consumers  
27 after the Effective Date.

1           3.4           **Technology Licensing.** The requirements in this Consent Judgment are not  
2 contingent upon the use of any particular method to achieve the Reformulation Level. Settling  
3 Defendant also represents and warrants that it does not employ any patented technology that will  
4 be used to meet the Reformulation Level.

5           **4. ENFORCEMENT**

6           4.1           **General Enforcement Provisions.** CEH may, by motion or application for an  
7 order to show cause before this Court, enforce the terms and conditions contained in this Consent  
8 Judgment. Any action to enforce alleged violations of Section 3.1 by Settling Defendant shall be  
9 brought exclusively pursuant to this Section 4, and be subject to the meet and confer requirement  
10 of Section 4.2.4 if applicable.

11           4.2           **Enforcement of Reformulation Commitment.**

12                   4.2.1       Notice of Violation. In the event that CEH purchases a Covered Product  
13 in California that was sold or offered for sale by Settling Defendant with a best-by or sell-by (or  
14 equivalent) date more than one year after the Effective Date, and for which CEH has laboratory  
15 test results showing that the Covered Product exceeds the applicable unit Reformulation Level,  
16 CEH may issue a Notice of Violation pursuant to this Section. An alleged exceedance of the  
17 Organic Unit Average Level shall not trigger CEH's enforcement rights under Section 4.2 and  
18 4.3.

19                   4.2.2       Service of Notice of Violation and Supporting Documentation.

20                           4.2.2.1     The Notice of Violation shall be sent to the person(s) identified in  
21 Section 8.2 to receive notices for Settling Defendant, and must be served within sixty (60) days of  
22 the later of the date the Covered Product at issue was purchased or otherwise acquired by CEH or  
23 the date that CEH can reasonably determine that the Covered Product at issue was manufactured,  
24 shipped, sold, or offered for sale by Settling Defendant, provided, however, that CEH may have  
25 up to an additional sixty (60) days to send the Notice of Violation if, notwithstanding CEH's  
26 good faith efforts, the test data required by Section 4.2.2.2 below cannot be obtained by CEH  
27 from its laboratory before expiration of the initial sixty (60) day period.

1                   4.2.2.2    The Notice of Violation shall, at a minimum, set forth: (a) the date  
2 the Covered Product was purchased; (b) the location at which the Covered Product was  
3 purchased; (c) a description of the Covered Product giving rise to the alleged violation, including  
4 its name, size, the name and address of the retail entity from which the sample was obtained, and  
5 pictures of the product packaging from all sides, which identifies the product lot (by means of its  
6 best-by or sell-by (or equivalent) date or otherwise); and (d) all test data obtained by CEH  
7 regarding the Covered Product and supporting documentation sufficient for validation of the test  
8 results, including any laboratory reports, quality assurance reports, and quality control reports  
9 associated with testing of the Covered Product.

10                   4.2.3    Notice of Election of Response. No more than thirty (30) days after  
11 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to  
12 CEH whether they elect to contest the allegations contained in a Notice of Violation (“Notice of  
13 Election”). Failure to provide a Notice of Election within thirty (30) days of effectuation of  
14 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.  
15 Upon notice to CEH, Settling Defendant may have up to an additional sixty (60) days to elect if,  
16 notwithstanding Settling Defendant’s good faith efforts, Settling Defendant is unable to verify the  
17 test data provided by CEH before expiration of the initial thirty (30) day period.

18                   4.2.3.1    If a Notice of Violation is contested, the Notice of Election shall  
19 include all documents upon which Settling Defendant is relying to contest the alleged violation,  
20 including all available test data on the Covered Product in question, including test data reflective  
21 of the level of acrylamide measured in the Covered Product at the point at which it was bottled by  
22 Settling Defendant into bottles or other containers to be offered for sale to California consumers.  
23 If Settling Defendant or CEH later acquires additional test or other data regarding the alleged  
24 violation during the meet and confer period described in Section 4.2.4, it shall notify the other  
25 Party and promptly provide all such data or information to the Party unless either the Notice of  
26 Violation or Notice of Election has been withdrawn.

27  
28

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

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

17                   4.2.5.1     Settling Defendant shall include in its Notice of Election test data  
18 reflective of the level of acrylamide measured in the Covered Product that is the subject of the  
19 Notice of Violation at the point at which it was bottled by Settling Defendant into bottles or other  
20 containers to be offered for sale to California consumers. If those data reflect testing of the  
21 Covered Product in the same calendar quarter that corresponds to the best-by or sell-by (or  
22 equivalent) date shown on the cap or label of the Covered Product which is the subject of the  
23 Notice of Violation and the results of that testing show that the applicable Reformulation Level of  
24 the Covered Product has not been exceeded at the point of bottling, then any exceedance of the  
25 Reformulation Level shall be deemed to be attributable to acrylamide formation arising during  
26 shelf life (*i.e.*, after the point of the final bottling and pasteurization of the Covered Product). If  
27 test data from the point of bottling shows that the applicable Reformulation Level of the Covered  
28

1 Product has been exceeded at the point of bottling, then Settling Defendant may alternatively  
2 establish through contemporaneous records that the exceedance resulted from additional holding,  
3 heating, and/or pasteurization of the applicable Covered Product due to bottling equipment being  
4 taken off-line for unscheduled maintenance (an “Upset”). In order to avail itself of this provision,  
5 Settling Defendant must provide CEH with contemporaneous records that show: (a) when the  
6 Upset occurred and its causes; (b) that the facility was being operated properly at the time of the  
7 Upset; and (c) that remedial measures were taken to prevent a recurrence of the Upset.

8 4.2.5.2 In the absence of making a showing under Section 4.2.5.1 above,  
9 Settling Defendant shall include in its Notice of Election a detailed description with supporting  
10 documentation of the corrective action(s) that they have undertaken or propose to undertake to  
11 address the alleged violation. Any such correction shall, at a minimum, provide reasonable  
12 assurance that all Covered Products having the same lot number as that of the Covered Product  
13 identified in CEH’s Notice of Violation (the “Noticed Covered Products”) will not be thereafter  
14 sold in California or offered for sale to California customers by Settling Defendant, and that  
15 Settling Defendant has sent instructions to any retailers or customers that offer the Noticed  
16 Covered Products for sale to either (a) cease offering the Noticed Covered Products for sale to  
17 California consumers and to destroy or return all such Noticed Covered Products to Settling  
18 Defendant, or (b) to sticker the Noticed Covered Products with adhesive labels containing the  
19 following statement: “**WARNING:** Consuming this product can expose you to chemicals  
20 including acrylamide, which are known to the State of California to cause cancer. For more  
21 information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).” The preceding warning must be set off from  
22 other surrounding information, enclosed in a box, and the word “**WARNING**” must be in all  
23 capital letters and bold print. The warning statement must be in a type size no smaller than the  
24 largest type size used for other consumer information (as that term is defined in 27 Cal. Code  
25 Regs. § 25600.1(c)) on the Noticed Covered Products, and in no case smaller than 6 point font.  
26 Settling Defendant shall keep for a period of one year and make available to CEH upon  
27 reasonable notice (which shall not exceed more than one request per year) for inspection and



1 copying records of any correspondence regarding the foregoing. If there is a dispute over the  
2 corrective action, Settling Defendant and CEH shall meet and confer before seeking any remedy  
3 in court.

4 4.2.5.3 In no case shall CEH issue more than one Notice of Violation per  
5 manufacturing lot of a type of Covered Product, nor shall CEH issue more than two Notices of  
6 Violation in the first year following the Effective Date.

7 4.2.5.4 If the Notice of Violation received by Settling Defendant under  
8 Section 4.2.1 was addressed by Section 4.2.5.1, then Settling Defendant shall pay \$2,500 for each  
9 Notice of Violation. If the Notice of Violation is the first, second, third, or fourth Notice of  
10 Violation received by Settling Defendant under Section 4.2.1 that was not successfully contested,  
11 addressed by Section 4.2.5.1, or otherwise withdrawn, then Settling Defendant shall pay \$15,000  
12 for each Notice of Violation. If Settling Defendant has received more than four (4) Notices of  
13 Violation under Section 4.2.1 that were not successfully contested, addressed by Section 4.2.5.1,  
14 or otherwise withdrawn, then Settling Defendant shall pay \$25,000 for each Notice of Violation.  
15 In no case shall Settling Defendant be obligated to pay more than \$75,000 for all Notices of  
16 Violation not successfully contested or withdrawn in any calendar year irrespective of the total  
17 number of Notices of Violation issued.

18 4.2.6 Payments. Any payments under Section 4.2 shall be made by check  
19 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a  
20 Notice of Election triggering a payment and shall be used as reimbursement for costs for  
21 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse  
22 attorneys’ fees and costs incurred in connection with these activities.

23 4.3 **Repeat Violations.** If Settling Defendant has received more than four (4)  
24 Notices of Violation concerning the same type of Covered Product that were not successfully  
25 contested, addressed by Section 4.2.5.1, or otherwise withdrawn in any two (2) year period then,  
26 at CEH’s option, CEH may seek whatever fines, costs, penalties, attorneys’ fees, or other  
27 remedies that are provided by law for failure to comply with the Consent Judgment. Prior to  
28

1 seeking such relief, CEH shall meet and confer with Settling Defendant for at least thirty (30)  
2 days to determine if Settling Defendant and CEH can agree on measures that Settling Defendant  
3 can undertake to prevent future alleged violations.

4 **5. PAYMENTS**

5 5.1 **Payments by Settling Defendant.** Within twenty (20) calendar days of the  
6 Effective Date, Settling Defendant shall pay the total sum of \$165,000 as a settlement payment as  
7 further set forth in this Section.

8 5.2 **Allocation of Payments.** The total settlement amount shall be paid in four (4)  
9 separate checks in the amounts specified below and delivered as set forth below. Any failure by  
10 Settling Defendant to comply with the payment terms herein shall be subject to a stipulated late  
11 fee to be paid by Settling Defendant to CEH in the amount of \$100 for each day the full payment  
12 is not received after the payment due date set forth in Section 5.1. The late fees required under  
13 this 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 \$28,875 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 \$21,656.25 shall be made payable to OEHHA and associated with taxpayer  
22 identification number 68-0284486. This payment shall be delivered as follows:  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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 \$7,218.75 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 \$21,655 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 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

1                   5.2.3     \$114,470 as a reimbursement of a portion of CEH’s reasonable attorneys’  
2 fees and costs (including but not limited to expert and investigative costs). The attorneys’ fees  
3 and cost reimbursement shall be made payable to the Lexington Law Group and associated with  
4 taxpayer identification number 94-3317175. This payment shall be delivered to Lexington Law  
5 Group, 503 Divisadero Street, San Francisco, CA 94117.

6     **6.       MODIFICATION AND DISPUTE RESOLUTION**

7                   6.1           **Modification or termination.** This Consent Judgment may be modified from  
8 time to time or terminated by express written agreement of the Parties, with the approval of the  
9 Court, or by an order of this Court upon motion and in accordance with law. The Parties agree  
10 that if Proposition 65 or its implementing regulations (including but not limited to the “safe  
11 harbor no significant risk level” for acrylamide set forth at Cal. Code Regs., tit. 27, section  
12 25705, subdivision (c)(2) or any “alternative risk level” adopted by regulation or court decision)  
13 are changed from their terms as they exist on the date of entry of this Consent Judgment in a  
14 manner that impacts the Reformulation Levels, or if OEHHA takes some other final regulatory  
15 action pertaining to the Covered Products in a manner that impacts the Reformulation Levels or  
16 that determines that warnings for acrylamide are not required for such products, or if a court of  
17 competent jurisdiction or an agency of the federal government, including, but not limited to, the  
18 U.S. Food and Drug Administration, states through any final decision, guidance, regulation or  
19 legally binding act that federal law has preemptive effect on any of the requirements of this  
20 Consent Judgment, then Settling Defendant may seek to modify or terminate this Consent  
21 Judgment. The Parties recognize that the Reformulation Levels are based on a compromise of a  
22 number of issues, and that a change to the “safe harbor no significant risk level” for acrylamide  
23 would not necessarily entitle a Party to a modification of the terms of this Consent Judgment  
24 corresponding in a linear relationship with such a change. Any modification or termination of  
25 this Consent Judgment shall not impact Settling Defendant’s payment obligations under Section  
26 5.

27                   6.2           **Notice; Meet and Confer.** Any Party seeking to modify this Consent  
28

1 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a  
2 motion to modify or terminate the Consent Judgment.

3           6.3           **Other Settlements.** CEH intends to enter into agreements with other entities  
4 that manufacture, distribute, and/or sell Covered Products. Should Settling Defendant determine  
5 that the Reformulation Levels set forth in any such Consent Judgment are less stringent than  
6 those set forth in Section 3.1, after meeting and conferring with CEH pursuant to Section 6.2  
7 above, Settling Defendant may move for a modification of this Consent Judgment to substitute  
8 those less stringent Reformulation Levels, and CEH agrees not to oppose any such motion except  
9 for good cause shown.

10           6.4           In the event that achievement of the Reformulation Levels set forth herein does  
11 not reduce levels of other chemicals to levels which do not require a warning under Proposition  
12 65 (including after accounting for any effect of sections 25703, 25803, and 25501 of Title 27 of  
13 the California Code of Regulations), as an alternative to having to encounter a new enforcement  
14 action initiated under section 25249.7(d) of the California Health and Safety Code, Settling  
15 Defendant may elect to meet and confer with CEH pursuant to Section 6.2 above concerning  
16 pursuing a potential modification of this Consent Judgment pursuant to Section 6.1 to have it  
17 address such other chemicals.

## 18   7.       **CLAIMS COVERED AND RELEASE**

19           7.1           This Consent Judgment is a full, final, and binding resolution between CEH on  
20 behalf of itself and the public interest and each Settling Defendant and its parents, subsidiaries,  
21 affiliated entities that are under common ownership, directors, officers, employees, agents,  
22 shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to  
23 which each Settling Defendant directly or indirectly distributes or sells Covered Products,  
24 including but not limited to distributors, wholesalers, customers, retailers (including, but not  
25 limited to, Mrs. Gooch’s Natural Food Markets, Inc. and Whole Foods Market California, Inc.  
26 and their corporate affiliates), franchisees, licensors, and licensees (“Downstream Defendant  
27 Releasees”), of any violation of Proposition 65 based on failure to warn about alleged exposure to  
28

1 acrylamide contained in Covered Products that were sold, distributed, or offered for sale by a  
2 Settling Defendant prior to the Effective Date.

3 7.2 CEH, for itself, its agents, successors and assigns, releases, waives, and  
4 forever discharges any and all claims against Settling Defendant, Defendant Releasees, and  
5 Downstream Defendant Releasees arising from any violation of Proposition 65 or any other  
6 statutory or common law claims that have been or could have been asserted by CEH individually  
7 or in the public interest regarding the failure to warn about exposure to acrylamide arising in  
8 connection with Covered Products manufactured, distributed, or sold by Settling Defendant prior  
9 to the Effective Date.

10 7.3 Compliance with the terms of this Consent Judgment by Settling Defendant  
11 shall constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and  
12 Downstream Defendant Releasees with respect to any alleged failure to warn about acrylamide in  
13 Covered Products manufactured, distributed, or sold by Settling Defendant after the Effective  
14 Date.

15 **8. PROVISION OF NOTICE**

16 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
17 notice shall be sent by first class and electronic mail to:

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

23 8.2 When Settling Defendant is entitled to receive any notice under this Consent  
24 Judgment, the notice shall be sent by first class and electronic mail to:

25 Will Wagner  
26 Greenberg Traurig, LLP  
27 1201 K Street, Suite 1100  
28 Sacramento, CA 95814  
wagnerw@gtlaw.com

Ian Wallace  
General Counsel  
Lassonde Pappas and Company, Inc.  
1 Collins Drive, Suite 200  
Carneys Point, NJ 08069  
Ian.wallace@lassonde.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 as a contract between the Parties upon the date signed by CEH and Settling Defendant, whichever is later, provided however, that (a) 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, and (b) 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 this 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 12 shall preclude a party from seeking an award of sanctions pursuant to law.

## **12. ENTIRE AGREEMENT**

12.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements

1 between the Parties except as expressly set forth herein. No representations, oral or otherwise,  
2 express or implied, other than those specifically referred to in this Consent Judgment have been  
3 made by any Party hereto. No other agreements not specifically contained or referenced herein,  
4 oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements  
5 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind  
6 any of the Parties hereto only to the extent that they are expressly incorporated herein. No  
7 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding  
8 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions  
9 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other  
10 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

11 **13. RETENTION OF JURISDICTION**

12 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
13 Consent Judgment.

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

15 14.1 Each signatory to this Consent Judgment certifies that he or she is fully  
16 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter  
17 into and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
18 Party.

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

20 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any  
21 claim against an entity other than Settling Defendant on terms that are different than those  
22 contained in this Consent Judgment.

23  
24  
25  
26  
27  
28



1 **16. EXECUTION IN COUNTERPARTS**

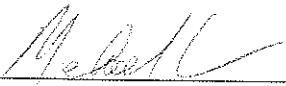
2 16.1 The stipulations to this Consent Judgment may be executed in counterparts and  
3 by means of facsimile or portable document format (pdf), which taken together shall be deemed  
4 to constitute one document.

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

8 Dated: 12/3/2019

**MICHAEL MARKMAN**  
\_\_\_\_\_  
Judge of the Superior Court

10 **IT IS SO STIPULATED:**

Dated: <u>10/1</u> , 2019	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>   _____ Signature <u>Michael Green</u> _____ Printed Name <u>CEO</u> _____ Title
Dated: _____, 2019	<b>LASSONDE PAPPAS AND COMPANY, INC.</b>  _____ Signature  _____ Printed Name  _____ Title


1 **16. EXECUTION IN COUNTERPARTS**

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

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

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

10 **IT IS SO STIPULATED:**

12 Dated: _____, 2019 13 14 15 16 17 18 19	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>  _____ Signature  _____ Printed Name  _____ Title
20 Dated: <u>October 1</u> , 2019 21 22 23 24 25 26 27 28	<b>LASSONDE PAPPAS AND COMPANY, INC.</b>   _____ Signature  <u>W. Ian Wallace</u> _____ Printed Name  <u>General Counsel</u> _____ Title

**EXHIBIT A**

Ruby Kist Prune Juice

Bombay Select Prune Juice

Bombay Golden Harvest Prune Juice

Smart Sense Prune Juice

Tipton Grove Prune Juice

Thirster Prune Juice

Market Pantry Prune Juice

Big Win Prune Juice

Sahara Burst Prune Juice

Winco Foods Prune Juice

Family Gourmet Prune Juice

Rejuv Prune Juice

Gold Emblem Prune Juice

365 Everyday Value Organic Prune Juice

Signature Kitchens Prune Juice

Essential Everyday Prune Juice

Raley's Prune Juice

Stater Bros. Prune Juice

Food Club Prune Juice

Full Circle Prune Juice

Delsea Farms Prune Juice

Great Value Prune Juice

Nature's Nectar Prune Juice

Clover Valley Prune Juice