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**ENDORSED
FILED
ALAMEDA COUNTY**

APR 30 2019

CLERK OF THE SUPERIOR COURT
By A. Tumonong
Deputy

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

CENTER FOR ENVIRONMENTAL HEALTH,)
)
Plaintiff,)
)
v.)
)
IDAHOAN FOODS, LLC, *et al.*,)
)
Defendants.)

Case No. RG 17-881957
**[PROPOSED] CONSENT JUDGMENT
AS TO MICHAEL FOODS, INC.**

1. DEFINITIONS

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

1.2 "Compliance Date" shall mean the date that is six months after the Effective Date.

1.3 "Covered Products" shall mean hash brown potato products, including but not limited to hash browns, hash brown patties, tater tots, and tater puffs sold or offered for sale by Settling Defendant to California consumers. Specific non-exclusive examples of Covered Products sold in the past by Settling Defendant are listed on Exhibit A.

1 1.4 “Effective Date” means the date on which notice of entry of this Consent Judgment
2 is by the Court is served upon Settling Defendant.

3 **2. INTRODUCTION**

4 2.1 The Parties to this Consent Judgment are the Center For Environmental Health
5 (“CEH”), a California non-profit corporation, and Michael Foods, Inc. (“Settling Defendant”).
6 CEH and Settling Defendants (the “Parties”) enter into this Consent Judgment to settle certain
7 claims asserted by CEH against Settling Defendant as set forth in Complaint.

8 2.2 On July 21, 2017, CEH issued a 60-day Notice of Violation of Proposition 65 to the
9 California Attorney General, to the District Attorneys of every county in California, to the City
10 Attorneys of every California city with a population greater than 750,000, and to Settling
11 Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons to
12 acrylamide in excess of the warning threshold when using Covered Products under the provided
13 directions for use, without first providing a clear and reasonable Proposition 65 warning.

14 2.3 Settling Defendant is a corporation or other business entity that employs ten or more
15 people and manufactures, distributes, sells, or offers for sale Covered Products that are sold in the
16 State of California or has done so in the past.

17 2.4 On November 9, 2017, CEH filed the Complaint, naming Settling Defendants as
18 defendants in the action.

19 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
21 over Settling Defendants as to the acts alleged in the Complaint, that venue is proper in the County
22 of Alameda, and that this Court has jurisdiction to enter and enforce this Consent Judgment as a full
23 and final resolution of all claims which were or could have been raised in the Complaint based on
24 the facts alleged therein with respect to Covered Products manufactured, distributed, and/or sold by
25 Settling Defendants.

26 2.6 Nothing in this Consent Judgment is or shall be construed as an admission by the
27 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with
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1 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
2 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
3 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
4 other pending or future legal proceedings. This Consent Judgment is the product of negotiation and
5 compromise and is accepted by the Parties solely for purposes of settling, compromising, and
6 resolving issues disputed in this Action.

7 **3. INJUNCTIVE RELIEF**

8 **3.1 Reformulation of Covered Products.** Beginning on the Compliance Date, Settling
9 Defendant shall not purchase or manufacture any Covered Product that will be sold or offered for
10 sale in California that exceeds the following acrylamide concentration limits (the “Reformulation
11 Levels”):

12 3.1.1 The average acrylamide concentration of Covered Products as used per
13 cooking instructions, shall not exceed, on average, 350 parts per billion (“ppb”) by weight (the
14 “Average Level”). The Average Level is determined by randomly selecting and testing at least 1
15 sample each from at least 5 and up to 30 different lots of a particular type of Covered Product (or
16 the maximum number of lots available for testing if fewer than 5) during a testing period of at least
17 60 days. The mean and standard deviation shall be calculated using the sampling data. Any data
18 points that are more than three standard deviations outside the mean shall be discarded once, and the
19 mean and standard deviation recalculated using the remaining data points. The mean determined in
20 accordance with this procedure shall be deemed the “Average Level.”

21 3.1.2 The acrylamide concentration of any individual unit, as used per cooking
22 instructions, shall not exceed 500 ppb by weight (the “Unit Level”), based on a representative
23 composite sample taken from the individual unit being tested.

24 **3.2 Compliance Testing.** Compliance with the Reformulation Levels shall be
25 determined by use of a test performed by an accredited laboratory using either GC/MS (Gas
26 Chromatograph/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry) or
27 any other testing method agreed upon by the Parties. Sampling shall be performed in accordance
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1 with the sampling protocol attached hereto as Exhibit B, or any other sampling protocol agreed to
2 by Settling Defendant and CEH. Compliance with the Reformulation Levels shall be determined
3 after cooking a Covered Product as if prepared for consumption in accordance with the instructions
4 on the packaging label of that Covered Product. If the label's recommended method includes a
5 range of cooking temperatures or times, the midpoint of those ranges shall be used in evaluating
6 compliance with the Reformulation Levels. Any samples of a Covered Product tested under
7 Sections 3.1.1 and 3.1.2 shall be homogenized before testing for acrylamide content.

8 **4. ENFORCEMENT**

9 **4.1 General Enforcement Provisions.** CEH may, by motion or application for an order
10 to show cause before this Court, enforce the terms and conditions contained in this Consent
11 Judgment. Any action to enforce alleged violations of Section 3.1 by Settling Defendant shall be
12 brought exclusively pursuant to this Section 4, and be subject to the meet and confer requirement of
13 Section 4.2.5, if applicable.

14 **4.2 Enforcement of Reformulation Commitment.**

15 **4.2.1 Covered Product Identification.** Within 30 days after the Compliance Date,
16 each Settling Defendant shall notify CEH of a means sufficient to allow CEH to identify Covered
17 Products manufactured or purchased by that Settling Defendant on or after that date, for example, a
18 unique brand name or characteristic system of product numbering or labeling. Upon written request
19 by CEH, but no more than once in any calendar year, Settling Defendant shall, within 30 days of
20 receiving a request from CEH, update the information provided to CEH pursuant to this Section
21 4.2.1 by notifying CEH of a means sufficient to allow CEH to identify Covered Products currently
22 supplied or offered for sale by each Settling Defendant. If CEH is unable to determine whether a
23 particular product is a Covered Product as to a Settling Defendant based on the information
24 provided to CEH pursuant to this Section 4.2.1, Settling Defendant shall cooperate in good faith
25 with CEH in determining whether the product at issue is a Covered Product supplied or offered for
26 sale by a Settling Defendant. All information provided to CEH pursuant to this Section 4.2.1 may
27 be designated by Settling Defendant as competitively sensitive confidential business information,
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1 and if so designated shall not be disclosed to any person without the written permission of Settling
2 Defendant. Any motions or pleadings or any other court filings that may reveal information
3 designated as competitively sensitive confidential business information pursuant to this Section
4 shall be submitted in accordance with California Rules of Court 8.46 and 2.550, et seq. The
5 provisions of this Section 4.2.1 shall sunset seven years after the Compliance Date.

6 4.2.2 Notice of Violation. In the event that CEH purchases a Covered Product in
7 California that was manufactured, distributed, or sold by a Settling Defendant and that has a best-by
8 or sell-by (or equivalent) date or other code that reflects that the Covered Product was manufactured
9 on or after the Compliance Date and for which CEH has laboratory test results showing that the
10 Covered Product has an acrylamide level exceeding the Unit Level, then CEH may issue a Notice of
11 Violation pursuant to this Section.

12 4.2.3 Service of Notice of Violation and Supporting Documentation.

13 4.2.3.1 The Notice of Violation shall be sent to the person(s) identified in
14 Section 8.2 to receive notices for Settling Defendant, and must be served within sixty (60) days of
15 the later of the date the Covered Product at issue was purchased or otherwise acquired by CEH or
16 the date that CEH can reasonably determine that the Covered Product at issue was manufactured,
17 distributed, or sold by a Settling Defendant, provided, however, that CEH may have up to an
18 additional sixty (60) days to send the Notice of Violation if, notwithstanding CEH's good faith
19 efforts, the test data required by Section 4.2.2.2 below cannot be obtained by CEH from its
20 laboratory before expiration of the initial sixty (60) day period.

21 4.2.3.2 The Notice of Violation shall, at a minimum, set forth: (a) the date the
22 Covered Product was purchased; (b) a description of the Covered Product giving rise to the alleged
23 violation, including the name and address of the retail entity from which the sample was obtained
24 and if available information that identifies the product lot; and (c) all test data obtained by CEH
25 regarding the Covered Product and supporting documentation sufficient for validation of the test
26 results, including any laboratory reports, quality assurance reports, and quality control reports
27 associated with testing of the Covered Product.
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1 4.2.4 Notice of Election of Response. No more than sixty (60) days after
2 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to
3 CEH whether or not it elects to contest the allegations contained in a Notice of Violation (“Notice
4 of Election”). Failure to provide a Notice of Election within sixty (60) days of effectuation of
5 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.

6 4.2.5 If a Notice of Violation is contested, the Notice of Election shall include all
7 then-available non-privileged documentary evidence regarding the alleged violation, including all
8 available test data. If a Settling Defendant or CEH later acquires additional test or other non-
9 privileged data regarding the alleged violation, it shall notify the other party and promptly provide
10 all such non-privileged data or information to the party.

11 4.2.6 Meet and Confer. If a Notice of Violation is contested, CEH and Settling
12 Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of
13 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw the
14 original Notice of Election contesting the violation and serve a new Notice of Election to not
15 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay
16 \$2,500 in addition to any payment required under this Consent Judgment. At any time, CEH may
17 withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the result shall be as
18 if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of
19 Violation results within thirty (30) days of a Notice of Election to contest, CEH may file an
20 enforcement motion or application pursuant to Section 4.1. The parties may extend this thirty (30)
21 day time period by stipulation. In any enforcement proceeding, CEH may seek whatever fines,
22 costs, penalties, attorneys’ fees, or other remedies are provided by law for failure to comply with the
23 Consent Judgment.

24 4.2.7 Non-Contested Notices. If Settling Defendant elects to not contest the
25 allegations in a Notice of Violation, it shall undertake corrective action(s) and make payments, if
26 any, as set forth below.
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1 4.2.7.1 Settling Defendant shall include in its Notice of Election a detailed
2 description with supporting documentation of the corrective action(s) that it has undertaken or
3 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,
4 provide reasonable assurance that all Covered Products having the same lot number or lot code as
5 that of the Covered Product identified in CEH’s Notice of Violation (the “Noticed Covered
6 Products”) will not be thereafter be sold or offered for sale in California. Settling Defendant shall
7 make available to CEH for inspection and copying records of non-privileged correspondence
8 sufficient to show market withdrawal of the Noticed Covered Products to the extent it has such
9 documents on file. If the Notice of Violation is based on a violation of the Unit Level with respect
10 to a single Covered Product, Settling Defendant will be excused from the market withdrawal
11 obligation if Settling Defendant produce test results or other evidence showing that the Noticed
12 Covered Products comply with the Average Level specified in Section 3.1.1. However, to avail
13 themselves of this provision, Settling Defendant must provide CEH with all non-privileged
14 acrylamide test data in its possession, custody, or control pertaining to the type of Covered Product
15 at issue in the Notice of Violation that was performed within the year prior to Settling Defendant
16 producing test results to CEH under this Section 4.2.7.1. If there is a dispute over whether Settling
17 Defendant is excused from the corrective action, Settling Defendant and CEH shall meet and confer
18 before seeking any remedy in court.

19 4.2.7.2 If the Notice of Violation is the first, second, third, or fourth Notice of
20 Violation received by Settling Defendant under Section 4.2.1 that was not successfully contested or
21 withdrawn, then Settling Defendant shall pay \$15,000 for each Notice of Violation. This shall be
22 the sole and exclusive remedy for such violation. If Settling Defendant have received more than
23 four (4) Notices of Violation under Section 4.2.2 that were not successfully contested or withdrawn,
24 then Settling Defendant shall pay \$25,000 for each subsequent Notice of Violation. If Settling
25 Defendant produces with its Notice of Election test data for the specific SKU, or comparative like
26 items, that reasonably demonstrate predicted acrylamide levels below the Unit Level, then any
27 payment under this Section shall be reduced by 100 percent (100%) for the first Notice of Violation,
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1 by seventy-five percent (75%) for the second Notice of Violation, and by fifty percent (50%) for
2 any subsequent Notice of Violation. If Settling Defendant is excused from the market withdrawal
3 obligation pursuant to Section 4.2.7.1, then Settling Defendant shall pay \$2,500 for that Notice of
4 Violation. In no case shall Settling Defendant be obligated to pay more than \$100,000 for
5 uncontested Notices of Violation in any calendar year irrespective of the total number of Notices of
6 Violation issued.

7 4.2.7.3 In no case shall CEH issue more than one Notice of Violation per
8 manufacturing lot of a type of Covered Product. CEH shall be limited to issuing no more than two
9 total Notices of Violation to Settling Defendant in the first twelve months after the Compliance
10 Date.

11 4.2.8 Payments. Any payments under Section 4.2 shall be made by check
12 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a
13 Notice of Election triggering a payment and which shall be used as reimbursement for costs for
14 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse attorneys’
15 fees and costs incurred in connection with these activities, and shall be the extent of all monetary
16 remedies available to CEH under this Consent Judgment for a non-contested Notice of Violation.

17 4.3 **Repeat Violations.** If Settling Defendant has received five (5) or more Notices of
18 Violation concerning the same type of Covered Product that were not successfully contested or
19 withdrawn, as to the fifth (5th) and subsequent Notices of Violation, at CEH’s option, CEH may
20 seek from Settling Defendant whatever fines, costs, penalties, attorneys’ fees, or other remedies that
21 are provided by law for failure to comply with the Consent Judgment. Prior to seeking such relief,
22 CEH shall meet and confer with Settling Defendant for at least thirty (30) days to determine if
23 Settling Defendant and CEH can agree on measures that Settling Defendant can undertake to
24 prevent future violations.

25 **5. PAYMENTS**

26 5.1 **Payments by Settling Defendant.** Within fifteen (15) calendar days of the Effective
27 Date, Settling Defendant shall pay the total sum of \$112,500 as a settlement payment as further set
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1 forth in this Section.

2 **5.2 Allocation of Payments.** The total settlement amount for Settling Defendant shall
3 be paid in four (4) separate checks in the amounts specified below and delivered as set forth below.
4 Any failure by Settling Defendant to comply with the payment terms herein shall be subject to a
5 stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each day the full
6 payment is not received after the applicable payment due date set forth in Section 5.1. The late fees
7 required under this Section shall be recoverable, together with reasonable attorneys' fees, in an
8 enforcement proceeding brought pursuant to Section 4.1 of this Consent Judgment. The funds paid
9 by Settling Defendant shall be allocated as set forth below between the following categories and
10 made payable as follows:

11 5.2.1 \$19,575 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).
12 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §
13 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard
14 Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment for
15 \$14,681.25 shall be made payable to OEHHA and associated with taxpayer identification number
16 68-0284486. This payment shall be delivered as follows:

17 For United States Postal Service Delivery:

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

23 For Non-United States Postal Service Delivery:

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

29 The CEH portion of the civil penalty payment for \$4,893.75 shall be made payable
30 to the Center For Environmental Health and associated with taxpayer identification number 94-
31 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
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1 Francisco, CA 94117.

2 5.2.2 \$14,680 as an Additional Settlement Payment (“ASP”) to CEH pursuant to
3 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH
4 intends to restrict use of the ASPs received from the Consent Judgment before the Court to the
5 following purposes: the funds will be placed in CEH’s Toxics in Food Fund and used to support
6 CEH programs and activities that seek to educate the public about acrylamide and other toxic
7 chemicals in food, to work with the food industry and agriculture interests to reduce exposure to
8 acrylamide and other toxic chemicals in food, and to thereby reduce the public health impacts and
9 risks of exposure to acrylamide and other toxic chemicals in food sold in California. CEH shall
10 obtain and maintain adequate records to document that ASPs are spent on these activities and CEH
11 agrees to provide such documentation to the Attorney General within thirty (30) days of any request
12 from the Attorney General. The payment pursuant to this Section shall be made payable to the
13 Center for Environmental Health, associated with taxpayer identification number 94-3251981, and
14 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

15 5.2.3 \$78,245 as a reimbursement of a portion of CEH’s reasonable attorneys’
16 fees and costs. The attorneys’ fees and cost reimbursement shall be made payable to the Lexington
17 Law Group and associated with taxpayer identification number 94-3317175. This payment shall be
18 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

19 **6. MODIFICATION AND DISPUTE RESOLUTION**

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

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

1 **7. CLAIMS COVERED AND RELEASE**

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

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

21 Provided that Settling Defendant complies in full with its obligations under Section 5 hereof,
22 CEH, in its individual capacity only and not in its representative capacity, also provides a release to
23 Settling Defendant, Defendant Releasee, and Downstream Defendant Releasee which shall be
24 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
25 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands of
26 CEH of any nature, character, or kind, whether known or unknown, suspected or unsuspected,
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1 arising out of alleged or actual exposures to acrylamide in the Covered Products manufactured,
2 distributed, or sold by Settling Defendant prior to the Compliance Date.

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

9 **8. PROVISION OF NOTICE**

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

12
13 Howard Hirsch
14 Lexington Law Group
15 503 Divisadero Street
16 San Francisco, CA 94117
17 hhirsch@lexlawgroup.com

18 8.2 When Settling Defendant is entitled to receive any notice under this Consent
19 Judgment, the notice shall be sent by first class and electronic mail to:

20 Sarah Esmaili
21 Arnold & Porter Kaye Scholer LLP
22 3 Embarcadero Center, Suite 1000
23 San Francisco, CA 94111
24 sarah.esmaili@apks.com

25 8.3 Any Party may modify the person and/or address to whom the notice is to be sent by
26 sending the other Parties notice by first class and electronic mail.
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1 **9. COURT APPROVAL**

2 9.1 This Consent Judgment shall become effective upon the date signed by CEH and
3 Settling Defendant, whichever is later, provided, however, that CEH shall prepare and file a Motion
4 for Approval of this Consent Judgment and Settling Defendant shall support approval of such
5 Motion.

6 This Consent Judgment is not effective until it is approved and entered by the Court. The
7 Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
8 noticed motion is required for judicial approval of this Consent Judgment, which motion CEH shall
9 draft and file and Settling Defendant shall support, appearing at the hearing if so requested. If any
10 third party objection to the motion for approval is filed, CEH and Settling Defendant agree to work
11 together to file a response and appear at any hearing.

12 If the Court does not approve the Consent Judgment, the Parties agree to meet and confer as
13 to whether to modify the language or appeal the ruling. If the Parties do not jointly agree on a
14 course of action to take, then the case shall proceed in its normal course on the Court's trial
15 calendar. If the Court's approval is ultimately overturned by an appellate court, the Parties shall
16 meet and confer as to whether to modify the terms of this Consent Judgment. If the parties do not
17 jointly agree on a course of action to take then the case shall proceed in its normal course on the
18 Court's trial calendar. In the event that this Consent Judgment is entered by the Court and
19 subsequently overturned by any appellate court, then any monies that have been provided to CEH or
20 its counsel under this Consent Judgment shall be refunded within 15 days of the appellate decision
21 becoming final and the Parties shall reasonably cooperate to obtain a timely refund of monies paid
22 to OEHHA under this Consent Judgment.

23 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
24 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose other
25 than to determine whether there was a material breach of Section 9.1.

26 **10. GOVERNING LAW AND CONSTRUCTION**

27 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
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1 California.

2 **11. ATTORNEYS' FEES**

3 11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
4 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs..

5 11.2 Nothing in this Section 11 shall preclude a party from seeking an award of sanctions
6 pursuant to law.

7 **12. ENTIRE AGREEMENT**

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

22 **13. RETENTION OF JURISDICTION**

23 13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent
24 Judgment.

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

2 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute
4 the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

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

12 **16. COMPLIANCE WITH REPORTING REQUIREMENTS; DISMISSAL**

13 16.1 CEH agrees to comply with the reporting form requirements referenced in Health
14 and Safety Code section 25249.7(f).

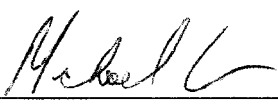
15 Within five (5) days of the receiving the payments required by Section 5, CEH shall file a
16 request for dismissal without prejudice as to Defendants Crystal Farms Distribution Company,
17 Lunardi's Supermarket, Inc. and Lunardi's Foods, and Defendants Crystal Farms Distribution
18 Company, Lunardi's Supermarket, Inc. and Lunardi's Foods shall waive all costs in this action.

19 **17. EXECUTION IN COUNTERPARTS**

20 17.1 The stipulations to this Consent Judgment may be executed in counterparts and by
21 means of facsimile or portable document format (pdf), which taken together shall be deemed to
22 constitute one document.
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IT IS SO STIPULATED:

Dated: <u>1/11</u> , 2018 2019	CENTER FOR ENVIRONMENTAL HEALTH  _____ Signature <u>MICHAEL GREEN</u> _____ Printed Name <u>CEO</u> _____ Title
Dated: _____, 2018	MICHAEL FOODS, INC. _____ Signature _____ Printed Name _____ Title

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

Dated: APR 30 2019 MICHAEL MARKMAN
Judge of the Superior Court

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IT IS SO STIPULATED:

Dated: _____, 2018	CENTER FOR ENVIRONMENTAL HEALTH _____ Signature _____ Printed Name _____ Title
Dated: <i>January 3, 2018</i> <i>2019</i>	MICHAEL FOODS, INC. <i>[Signature]</i> _____ Signature <i>BRAD COOK</i> _____ Printed Name <i>VP Finance</i> _____ Title

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

Dated: _____ Judge of the Superior Court

EXHIBIT A

- Simply Potatoes® Refrigerated O'Brien Hashbrowns
- Simply Potatoes® Refrigerated Garlic & Herb Hashbrowns
- Simply Potatoes® Refrigerated Shredded Hash Browns Potatoes
- Simply Potatoes® Refrigerated Southwest Shredded Hash Browns Potatoes

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1 **EXHIBIT B**

2 **Sample Preparation Method**

- 3 1. Prepare and cook hash browns according to label instructions.
- 4 2. For a range of cooking time or temperature specified in the label instructions, cook
- 5 according to the midpoint of the range.
- 6 3. Press the hash browns lightly once during cooking.
- 7 4. Distribute the product evenly so that the hash browns layer is not less than 1/2 inch
- 8 thick.
- 9 5. In cooking hash browns, an electric skillet with an adjustable temperature gauge (and
- 10 which can be set to the temperature specified in the label instructions) shall be used.
- 11 Temperature shall be validated with an appropriate thermometer.
- 12 6. Immediately remove hash browns from the skillet when cooking time ends.

13 **Sample Analysis – if hash browns are prepared offsite and shipped to lab**

- 14 1. Remove hash browns from the skillet and allow to cool at room temperature for
- 15 5 minutes.
- 16 2. Refrigerate $\leq 40^{\circ}\text{F}$ for 2-2.5 hours, before freezing.
- 17 3. Ship samples for ACR analysis overnight on dry ice.

18 Data recorded for each sample shall include cooking method details including hash brown

19 temperature, canola oil weight used, skillet ID, cook time, cook temperature, and shipping date (as

20 applicable).