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**ENDORSED
FILED
ALAMEDA COUNTY**

DEC 03 2019

CLERK OF THE SUPERIOR COURT

By Alanna Hernandez
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,)	Case No. RG 17870238
)	
Plaintiff,)	[PROPOSED] CONSENT
)	JUDGMENT AS TO AMPLIFY
v.)	SNACK BRANDS, INC.
)	
GOYA FOODS, INC., <i>et al.</i> ,)	
)	
Defendants.)	
)	
)	
)	

1. DEFINITIONS

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

1.2 "Covered Products" means fried or baked potato, sweet potato or vegetable based snack food products, including Sliced Chips and Extruded Products (as defined below), manufactured, sold, distributed, or offered for sale by the Settling Defendant. An initial list of Covered Products previously manufactured, distributed, or sold by Settling Defendant (which currently has no Covered Products but may in the future), is attached hereto as Exhibit A.

1.3 "Sliced Chips" means sliced potato chips.

1 1.4 “Extruded Products” means all Covered Products other than Sliced Chips. It is the
2 Parties’ intent that the Extruded Products referenced in this Consent Judgment are the kind of
3 products falling within Type 4 in the “extruded, pellet, and baked products” category in the
4 Consent Judgment as to Defendant Snak King Corporation, entered August 31, 2011, in *People v.*
5 *Snyder’s of Hanover, et al.*, Alameda County Superior Court Case No. RG 09-455286.1

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

8 1.6 “Lot” refers to all units of Covered Products manufactured during the same
9 manufacturing run at the same manufacturing facility as determined by reference to the alpha-
10 numeric code on the packaging of the units.

11 **2. INTRODUCTION**

12 2.1 The Parties to this Consent Judgment, the Center for Environmental Health, a
13 California non-profit corporation (“CEH”) and Amplify Snack Brands, Inc. (“Settling
14 Defendant”), enter into this Consent Judgment to settle certain claims asserted by CEH against
15 Settling Defendant as set forth in the Complaint.

16 2.2 On or about February 1, 2018, CEH provided 60-day Notices of Violation of
17 Proposition 65 to the California Attorney General, to the District Attorneys of every county in
18 California, to the City Attorneys of every California city with a population greater than 750,000,
19 and to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing
20 persons to acrylamide contained in Covered Products without first providing a clear and
21 reasonable Proposition 65 warning.

22 2.3 Settling Defendant is a corporation that manufactures, sells, distributes, or offers
23 for sale Covered Products that are sold in the State of California.

24 2.4 On April 18, 2018, CEH amended the Complaint pursuant to Code of Civil
25 Procedure section 474, naming Settling Defendant as a defendant in this action.

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27 ¹ These products are referred to as “Group C, Type 4” products in Exhibit A to the Snak King Consent Judgment,
28 which is attached hereto as Exhibit 1 and is available on the Attorney General’s website at
<https://oag.ca.gov/prop65/litigation>.

1 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
2 has jurisdiction over the allegations of violations contained in the Complaint and personal
3 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in
4 the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent
5 Judgment as a full and final resolution of all claims which were or could have been raised in the
6 Complaint based on the facts alleged therein with respect to Covered Products manufactured,
7 distributed, and/or sold by Settling Defendant.

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

16 **3. INJUNCTIVE RELIEF**

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

23 3.1.1 For Sliced Chips:

24 3.1.1.1 The average acrylamide concentration shall not exceed 281
25 parts per billion (“ppb”) by weight (the “Sliced Chips Average Level”).
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1 3.1.1.2 The acrylamide concentration of any individual unit of Sliced
2 Chips shall not exceed 350 ppb by weight, based on a representative composite sample taken
3 from the individual unit being tested (the “Sliced Chips Unit Level”).

4 3.1.2 For Extruded Products:

5 3.1.2.1 The average acrylamide concentration shall not exceed 350 ppb
6 by weight (the “Extruded Products Average Level”).

7 3.1.2.2 The acrylamide concentration of any individual unit of
8 Extruded Products shall not exceed 490 ppb by weight, based on a representative composite
9 sample taken from the individual unit being tested (the “Extruded Products Unit Level”).

10 3.2 **Average Level Determination.** The Average Level (either the Sliced Chip
11 Average Level or the Extruded Products Average Level, as applicable) is determined by
12 randomly selecting and testing at least one (1) sample each from at least three (3) and up to ten
13 (10) different Lots of a particular Covered Product (or the maximum number of Lots available for
14 testing if fewer than three) during a period of at least 365 days. The mean and standard deviation
15 shall be calculated using the sampling data. Any data points that are more than three standard
16 deviations outside the mean shall be discarded, and the mean and standard deviation recalculated
17 using the remaining data points. The mean determined in accordance with this procedure shall be
18 deemed the “Average Level.”

19 3.3 **Alternative Compliance.** As an alternative to meeting the Reformulation Levels,
20 Settling Defendant may sell Covered Products that do not meet the Reformulation Levels
21 provided that such sales are only to entities to whom Settling Defendant has provided written
22 notice to that the Covered Products are not labeled for sale in California.

23 4. **ENFORCEMENT**

24 4.1 **General Enforcement Provisions.** CEH may, by motion or application for an
25 order to show cause before this Court, enforce the terms and conditions contained in this Consent
26 Judgment. Any action to enforce alleged violations of Section 3.1 by Settling Defendant shall be
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1 brought exclusively pursuant to this Section 4, and be subject to the meet and confer requirement
2 of Section 4.2.4 if applicable.

3 **4.2 Enforcement of the Reformulation Commitment.**

4 4.2.1 Notice of Violation. If CEH purchases a unit of a Covered Product in
5 California with a best-by or sell-by (or equivalent) date more than six (6) months after the
6 Effective Date, and CEH obtains laboratory test results showing the unit of Covered Product that
7 CEH purchased has an acrylamide level exceeding the applicable Unit Level, CEH may issue a
8 Notice of Violation pursuant to this Section.

9 4.2.2 Service of Notice of Violation and Supporting Documentation.

10 4.2.2.1 Subject to Section 4.2.1, the Notice of Violation shall be sent to
11 the person(s) identified in Section 8.2 to receive notices for Settling Defendant, and must be
12 served within sixty (60) days of the later of the date the unit of Covered Product at issue was
13 purchased or otherwise acquired by CEH or the date that CEH can reasonably determine that the
14 unit of Covered Product at issue was manufactured, shipped, sold, or offered for sale by Settling
15 Defendant, provided, however, that CEH may have up to an additional sixty (60) days to send the
16 Notice of Violation if, notwithstanding CEH's good faith efforts, the test data required by Section
17 4.2.2.2 below cannot be obtained by CEH from its laboratory before expiration of the initial sixty
18 (60) day period.

19 4.2.2.2 The Notice of Violation shall, at a minimum, set forth: (a) the
20 date the unit of Covered Product at issue was purchased; (b) the location at which the unit of
21 Covered Product at issue was purchased; (c) a description of the Covered Product giving rise to
22 the alleged violation, including the name and address of the retail location from which the sample
23 was obtained and pictures of the product packaging from all sides, which identifies the product
24 Lot (if available); and (d) all test data obtained by CEH regarding the unit of Covered Product at
25 issue and supporting documentation sufficient for validation of the test results, including any
26 laboratory reports, quality assurance reports, and quality control reports associated with testing of
27 the unit of Covered Product.
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1 4.2.3 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 stating whether it elects to contest the allegations contained in the Notice of Violation
4 (“Notice of Election”). Except as otherwise provided herein, failure to provide a Notice of
5 Election within sixty (60) days of effectuation of service of a Notice of Violation shall be deemed
6 an election to contest the Notice of Violation. Upon notice to CEH, Settling Defendant may have
7 up to an additional sixty (60) days to elect if, notwithstanding Settling Defendant’s good faith
8 efforts, Settling Defendant is unable to verify the test data provided by CEH before expiration of
9 the initial sixty (60) day period.

10 4.2.3.1 If a Notice of Violation is contested, the Notice of Election shall
11 include all documents upon which Settling Defendant is relying to contest the alleged violation,
12 including any available acrylamide testing data. If Settling Defendant or CEH later acquires
13 additional test or other data regarding the alleged violation during the meet and confer period
14 described in Section 4.2.4, it shall notify the other Party and promptly provide all such data or
15 information to the Party unless either the Notice of Violation or Notice of Election has been
16 withdrawn.

17 4.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and Settling
18 Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of
19 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw
20 the original Notice of Election contesting the violation and serve a new Notice of Election to not
21 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay
22 \$2,500 in addition to any other payment required under this Consent Judgment. At any time,
23 CEH may withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the
24 result shall be as if CEH never issued any such Notice of Violation. If no informal resolution of a
25 Notice of Violation results within thirty (30) days of a Notice of Election to contest, CEH may
26 file an enforcement motion or application pursuant to Section 4.1. In any such proceeding, CEH
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1 may seek whatever fines, costs, penalties, attorneys' fees, or other remedies are provided by law
2 for an alleged failure to comply with the Consent Judgment.

3 4.2.5 Non-Contested Notices. If Settling Defendant elects to not contest the
4 allegations in a Notice of Violation, it shall undertake corrective action(s) and make payments, if
5 any, as set forth below.

6 4.2.5.1 Settling Defendant shall include in its Notice of Election a
7 detailed description with supporting documentation of the corrective action(s) that it has
8 undertaken or proposes to undertake to address the alleged violation. Any such correction shall,
9 at a minimum, provide reasonable assurance that all Covered Products from the same Lot as the
10 Covered Product identified in CEH's Notice of Violation (the "Noticed Covered Products") will
11 not be thereafter sold in California or offered for sale to California customers by Settling
12 Defendant without a Proposition 65 warning meeting the requirements of Sections 25607.1 and
13 25607.2 of Title 27 of the California Code of Regulations. Settling Defendant shall keep for a
14 period of one year and make available to CEH upon reasonable notice (which shall not exceed
15 more than one request per year) for inspection and copying records of any correspondence
16 regarding the foregoing.

17 4.2.5.2 If the Notice of Violation is based on a violation of the Unit
18 Level with respect to a single unit of Covered Product, Settling Defendant may be excused
19 from the corrective action obligation described in Section 4.2.5.1 (but not the monetary
20 payments, if any, required by this Section 4) if Settling Defendant produces test results and other
21 evidence that: (1) demonstrates that the acrylamide levels found by CEH in the unit alleged to be
22 in violation is an aberration; and (2) otherwise provides reasonable assurance that the
23 remainder of the Noticed Covered Products, aside from the unit alleged to be in violation,
24 comply with the Reformulation Levels. The Parties agree that this Section 4.2.5.2 is satisfied if
25 Settling Defendant can demonstrate that the Covered Product at issue in the Notice of Violation
26 satisfies the applicable Average Level as determined pursuant to Section 3.1. However, to avail
27 itself of this provision, Settling Defendant must provide CEH with all acrylamide test data in its
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1 possession, custody or control pertaining to the Covered Product at issue in the Notice of
2 Violation that was performed within the year prior to the date of the Notice of Violation.

3 4.2.5.3 If there is a dispute over the sufficiency of the corrective action
4 taken by Settling Defendant under Section 4.2.5.1, or over whether Settling Defendant is
5 excused from the corrective action obligation under Section 4.2.5.2, Settling Defendant and
6 CEH shall meet and confer before seeking any remedy in court. In no case shall CEH issue
7 more than one Notice of Violation per Lot of a type of Covered Product, nor shall CEH issue
8 more than two Notices of Violation in the first three hundred and sixty-five (365) days following
9 the introduction of the Covered Product in the California market following the Effective Date.

10 4.2.5.4 If the Notice of Violation is the first, second, third, or fourth
11 Notice of Violation received by Settling Defendant under Section 4.2.1 that was not successfully
12 contested or withdrawn, then Settling Defendant shall pay \$15,000 for each Notice of Violation.
13 If Settling Defendant has received more than four (4) Notices of Violation under Section 4.2.1
14 that were not successfully contested or withdrawn, then Settling Defendant shall pay \$25,000 for
15 each Notice of Violation. If Settling Defendant produces with its Notice of Election test data for
16 the Covered Product that: (i) was conducted prior to the date CEH gave Notice of Violation;
17 (ii) was conducted on the same type of Covered Product; and (iii) demonstrates acrylamide levels
18 below the applicable Unit Level, then any payment under this Section shall be reduced by 100
19 percent (100%) for the first Notice of Violation, by seventy-five percent (75%) for the second
20 Notice of Violation, and by fifty percent (50%) for any subsequent Notice of Violation. If
21 Settling Defendant is excused from corrective action under Section 4.2.5.2, then Settling
22 Defendant shall pay \$2,500 for that Notice of Violation. In no case shall Settling Defendant be
23 obligated to pay more than \$100,000 for all Notices of Violation not successfully contested or
24 withdrawn in any calendar year irrespective of the total number of Notices of Violation issued.
25 The monetary remedies set forth in this Section shall be the sole and exclusive monetary remedy
26 for such non-contested violations and CEH shall not be entitled to seek additional amounts for
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1 attorney fees and costs, civil penalties, payments in lieu of civil penalties, or any other monetary
2 relief.

3 4.2.6 Payments. Any payments under Section 4.2 shall be made by check
4 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a
5 Notice of Election triggering a payment and shall be used as reimbursement for costs for
6 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse
7 attorneys’ fees and costs incurred in connection with these activities.

8 4.3 **Repeat Violations**. If Settling Defendant has received four (4) or more Notices of
9 Violation concerning the same type of Covered Product that were not successfully contested or
10 withdrawn in any two (2) year period then, at CEH’s option, CEH may seek whatever fines, costs,
11 penalties, attorneys’ fees, or other remedies that are provided by law for failure to comply with
12 the Consent Judgment. Prior to seeking such relief, CEH shall meet and confer with Settling
13 Defendant for at least thirty (30) days to determine if Settling Defendant and CEH can agree on
14 measures that Settling Defendant can undertake to prevent future alleged violations.

15 **5. PAYMENTS**

16 5.1 **Payments by Settling Defendant**. Within twenty (20) calendar days of the
17 Effective Date, Settling Defendant shall pay the total sum of \$95,000 as a settlement payment as
18 further set forth in this Section.

19 5.2 **Allocation of Payments**. The total settlement amount shall be paid in five (5)
20 separate checks in the amounts specified below and delivered as set forth below. Any failure by
21 Settling Defendant to comply with the payment terms herein shall be subject to a stipulated late
22 fee to be paid by Settling Defendant to CEH in the amount of \$100 for each day the full payment
23 is not received after the payment due date set forth in Section 5.1. The late fees required under
24 this Section shall be recoverable, together with reasonable attorneys’ fees, in an enforcement
25 proceeding brought pursuant to Section 4 of this Consent Judgment. The funds paid by Settling
26 Defendant shall be allocated as set forth below between the following categories and made
27 payable as follows:
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5.2.1 \$12,745 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 \$9,558.75 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 \$3,186.25 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 \$9,555 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

1 obtain and maintain adequate records to document that ASPs are spent on these activities and
2 CEH agrees to provide such documentation to the Attorney General within thirty (30) days of any
3 request from the Attorney General. The payment pursuant to this Section shall be made payable
4 to the Center for Environmental Health and associated with taxpayer identification number 94-
5 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
6 Francisco, CA 94117.

7 5.2.3 \$72,700 as a reimbursement of a portion of CEH’s reasonable attorneys’
8 fees and costs. The attorneys’ fees and cost reimbursement shall be made in two separate checks
9 as follows: (a) \$61,465 payable to the Lexington Law Group and associated with taxpayer
10 identification number 94-3317175; and (b) \$11,235 payable to the Center for Environmental
11 Health and associated with taxpayer identification number 94-3251981. These payments shall be
12 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

13 **6. MODIFICATION AND DISPUTE RESOLUTION**

14 6.1 **Modification.** This Consent Judgment may be modified from time to time by
15 express written agreement of the Parties, with the approval of the Court and prior notice to the
16 Attorney General’s Office, or by an order of this Court upon motion of either Party and prior
17 notice to the Attorney General’s Office and to the other Party in accordance with law.

18 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
19 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to
20 modify the Consent Judgment.

21 6.3 **Change in Proposition 65.** If Proposition 65 or its implementing regulations
22 (including but not limited to the “safe harbor no significant risk level” for acrylamide set forth at
23 Cal. Code Regs., tit. 27, section 25705, subdivision (c)(2) or any “alternative risk level” adopted
24 by regulation or court decision) are changed from their terms as they exist on the date of entry of
25 this Consent Judgment in a manner that impacts the Reformulation Levels, or if OEHHA takes
26 some other final regulatory action for products similar to the Covered Products in a manner that
27 impacts the Reformulation Levels or determines that warnings for acrylamide are not required for
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1 such products, then Settling Defendant may seek to modify this Consent Judgment to modify the
2 Reformulation Levels. The Parties recognize that the Reformulation Levels are based on a
3 compromise of a number of issues, and that a change to the “safe harbor no significant risk level”
4 for acrylamide would not necessarily entitle a Party to a modification of the terms of this Consent
5 Judgment corresponding to a linear relationship with such a change.

6 **6.4 Other Court Decisions.** If a final decision of a court determines that warnings for
7 acrylamide exposures or that enforcement of Proposition 65 claims for acrylamide exposures are
8 preempted or otherwise unlawful or unconstitutional with respect to products similar to the
9 Covered Products, then Settling Defendant may move to modify this Consent Judgment to
10 conform to such ruling in order to avoid unfair, inconsistent, or anti-competitive results.

11 **6.5 Federal Agency Action and Preemption.** If a court of competent jurisdiction or
12 an agency of the federal government, including, but not limited to, the U.S. Food and Drug
13 Administration, states through any guidance, regulation or legally binding act that federal law has
14 preemptive effect on any of the requirements of this Consent Judgment, then this Consent
15 Judgment may be modified in accordance with the procedure set forth in Sections 6.1 and 6.2 to
16 bring it into compliance with or avoid conflict with federal law. Any such modification shall be
17 limited to those changes that are necessary to bring this Consent Judgment into compliance with
18 or avoid conflict with federal law.

19 **6.6** Before filing any motion to modify the Consent Judgment, Settling Defendant
20 shall provide written notice to CEH to initiate the meet and confer procedure in Section 6.2. If
21 the Parties do not agree on the proposed modification during informal meet and confer efforts,
22 Settling Defendant may file a motion to modify the Consent Judgment within sixty (60) days of
23 the date of the written notice that Settling Defendant provides to CEH under this Section 6.

24 **7. APPLICATION OF CONSENT JUDGMENT**

25 **7.1** This Consent Judgment shall apply to and be binding upon CEH and Settling
26 Defendant, and their respective divisions, subdivisions, and subsidiaries, and the successors or
27 assigns of any of them.

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1 **8. CLAIMS COVERED AND RELEASED**

2 8.1 Provided that Settling Defendant makes the payments required 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 its parents, subsidiaries, affiliated entities
5 that are under common ownership, directors, officers, employees, agents, shareholders,
6 successors (including KP Snacks and Intersnak Group as current owners of Settling Defendant’s
7 former Tyrrells’ subsidiaries), assigns, and attorneys (“Defendant Releasees”), and all entities to
8 which Settling Defendant directly or indirectly distributes or sells Covered Products, including
9 but not limited to distributors, wholesalers, customers, retailers, marketplace hosts, franchisees,
10 licensors, and licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65
11 based on alleged exposure to acrylamide contained in Covered Products that were manufactured,
12 distributed or sold by Settling Defendant prior to the Effective Date.

13 8.2 Provided that Settling Defendant makes the payments required under Section 5
14 hereof, CEH, for itself, its agents, successors and assigns, releases, waives, and forever discharges
15 any and all claims against Settling Defendant, Defendant Releasees, and Downstream Defendant
16 Releasees arising from any violation of Proposition 65 or any other statutory or common law
17 claims that have been or could have been asserted by CEH individually or in the public interest
18 regarding the failure to warn about exposure to acrylamide arising in connection with Covered
19 Products manufactured, distributed or sold by Settling Defendant prior to the Effective Date.

20 8.3 Provided that Settling Defendant makes the payments required under Section 5
21 hereof, compliance with the terms of this Consent Judgment by Settling Defendant shall
22 constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees and
23 Downstream Defendant Releasees with respect to any alleged failure to warn about acrylamide in
24 Covered Products manufactured, distributed, or sold by Settling Defendant after the Effective
25 Date.

1 **9. PROVISION OF NOTICE**

2 9.1 When CEH is entitled to receive any notice under this Consent Judgment, the
3 notice shall be sent by first class and electronic mail to:

4 Howard Hirsch
5 Lexington Law Group
6 503 Divisadero Street
7 San Francisco, CA 94117
8 hhirsch@lexlawgroup.com

9 9.2 When Settling Defendant is entitled to receive any notice under this Consent
10 Judgment, the notice shall be sent by first class and electronic mail to:

11 General Counsel
12 The Hershey Company
13 100 Crystal A Drive
14 Hershey, PA 17033
15 legalnotices@hersheys.com

16 With a copy to;

17 Robert Falk
18 Morrison & Foerster LLP
19 425 Market Street, 32nd Floor
20 San Francisco, CA 94105
21 Rfalk@mofo.com

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

24 **10. COURT APPROVAL**

25 10.1 This Consent Judgment shall become effective upon the date signed by CEH and
26 Settling Defendant, whichever is later, provided however, that CEH shall prepare and file a
27 Motion for Approval of this Consent Judgment and Settling Defendant shall support entry of
28 this Consent Judgment by the Court.

 10.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
effect and shall not be introduced into evidence or otherwise used in any proceeding for any
purpose other than to allow the Court to determine if there was a material breach of Section 10.1.

1 **11. GOVERNING LAW AND CONSTRUCTION**

2 11.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California.

4 **12. ATTORNEYS' FEES**

5 12.1 A Party who unsuccessfully brings or contests an action, motion, or application
6 arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable
7 attorneys' fees and costs.

8 12.2 Nothing in this Section 12 shall preclude a party from seeking an award of
9 sanctions pursuant to law.

10 **13. ENTIRE AGREEMENT**

11 13.1 This Consent Judgment contains the sole and entire agreement and understanding
12 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
13 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
14 and therein. There are no warranties, representations, or other agreements between the Parties
15 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
16 other than those specifically referred to in this Consent Judgment have been made by any Party
17 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
18 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
19 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
20 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
21 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
22 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
23 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
24 whether or not similar, nor shall such waiver constitute a continuing waiver.

25 **14. RETENTION OF JURISDICTION**

26 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
27 Consent Judgment.

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

2 15.1 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
4 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

6 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
7 against any other entity on terms that are different from those contained in this Consent
8 Judgment. Settling Defendant may move to modify this Consent Judgment pursuant to Section 6
9 to substitute higher Reformulation Levels that CEH agrees to in a future consent judgment
10 applicable to products sold by any other entity that would otherwise qualify as "Covered
11 Products" under this Consent Judgment, and CEH agrees not to oppose any such motion except
12 for good cause shown.

13 **17. EXECUTION IN COUNTERPARTS**

14 17.1 The stipulations to this Consent Judgment may be executed in counterparts and by
15 means of facsimile or portable document format (pdf), which taken together shall be deemed to
16 constitute one document.

17
18 **IT IS SO ORDERED, ADJUDGED, AND**
19 **DECREED.**

20 Dated: _____

12/3/2019

MICHAEL MARKMAN

Judge of the Superior Court

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IT IS SO STIPULATED:

Dated: 6/25, 2019

CENTER FOR ENVIRONMENTAL HEALTH

Michael
Signature

Michael Green
Printed Name

CEO
Title

Dated: _____, 2019

AMPLIFY SNACK BRANDS, INC.

Signature

Printed Name

Title

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IT IS SO STIPULATED:

Dated: _____, 2019

CENTER FOR ENVIRONMENTAL HEALTH

Signature

Printed Name

Title

Dated: June 12, 2019

AMPLIFY SNACK BRANDS, INC.



Signature

Doug Behrens
Printed Name

President
Title



Rebecca Halko
SVP Finance, Accounting & IT
Amplify Snack Brands

EXHIBIT A

Tyrrells Potato (or Sweet Potato) Chips/Crisps, including but not limited to Tyrrells' Hand Cooked English Chips Sea Salt & Cracked Black Pepper (SKU No. 8-10697-01108-7), manufactured prior to August 2018

Tyrrells Vegetable Chips/Crisps, including but not limited to Tyrrells' Veg Chips Root, Parsnip & Carrot Chips (SKU No. 8-10697-01112-4, manufactured prior to August 2018