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**ENDORSED
FILED
ALAMEDA COUNTY**

DEC 03 2019

CLERK OF THE SUPERIOR COURT

By Reginald Hamman
Deputy

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

CENTER FOR ENVIRONMENTAL HEALTH,)

Plaintiff,)

v.)

GALLERIA MARKET, LP, *et al.*,)

Defendants.)

Case No. RG 18-928947

**[PROPOSED] CONSENT JUDGMENT
AS TO ALDI, INC.**

1. DEFINITIONS

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

1.2 "Compliance Date" shall mean the later of December 1, 2019 or the date that is 30 days after the Effective Date.

1 1.3 “Covered Products” shall mean fried or baked potato- or sweet potato-based chips
2 and snack products, including Sliced Chips and Extruded Products (as defined below) sold or
3 offered for sale by ALDI, Inc. to California consumers under ALDI, Inc’s. store brands, including
4 but not limited to Clancy’s and Simply Nature.

5 1.4 “Sliced Chips” means sliced potato chips.

6 1.5 “Extruded Products” means all Covered Products other than Sliced Chips. It is the
7 Parties’ intent that the Extruded Products referenced in this Consent Judgment are the kind of
8 products falling within Type 4 in the “extruded, pellet, and baked products” category in the Consent
9 Judgment as to Defendant Snak King Corporation, entered August 31, 2011, in *People v. Snyder’s*
10 *of Hanover, et al.*, Alameda County Superior Court Case No. RG 09-455286.¹

11 1.6 “Effective Date” means the date on which notice of entry of this Consent Judgment
12 is by the Court is served upon Settling Defendant.

13 **2. INTRODUCTION**

14 2.1 The Parties to this Consent Judgment are the Center For Environmental Health
15 (“CEH”), a California non-profit corporation, and ALDI, Inc. (“Settling Defendant” or “ALDI”).
16 CEH and Settling Defendant (the “Parties”) enter into this Consent Judgment to settle certain claims
17 asserted by CEH against Settling Defendant as set forth in Complaint. The Parties agree and intend
18 that this Consent Judgment resolves any and all claims under Proposition 65 for unwarned
19 exposures to acrylamide in the Covered Products with respect to any entity’s manufacture,
20 distribution or sale of the Covered Products.

21 2.2 On June 1, 2018, CEH issued a 60-day Notice of Violation of Proposition 65 to the
22 California Attorney General, to the District Attorneys of every county in California, to the City
23 Attorneys of every California city with a population greater than 750,000, and to Settling
24 Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons to

25
26 ¹ These products are referred to as “Group C, Type 4” products in Exhibit A to the Snak King Consent Judgment, which
is available on the Attorney General’s website at <https://oag.ca.gov/prop65/litigation>.

1 acrylamide in excess of the warning threshold when consuming fried or baked potato- or sweet
2 potato-based snack foods under the Clancy brand, without first providing a clear and reasonable
3 Proposition 65 warning.

4 2.3 On June 20, 2018, CEH issued a 60-day Notice of Violation of Proposition 65 to the
5 California Attorney General, to the District Attorneys of every county in California, to the City
6 Attorneys of every California city with a population greater than 750,000, and to Settling
7 Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons to
8 acrylamide in excess of the warning threshold when consuming fried or baked potato- or sweet
9 potato-based snack foods under the Simply Nature brand, without first providing a clear and
10 reasonable Proposition 65 warning.

11 2.4 Settling Defendant is a corporation or other business entity that employs ten or more
12 people and manufactures, distributes, sells, or offers for sale Covered Products that are sold in the
13 State of California or has done so in the past.

14 2.5 On November 16, 2018, CEH filed the original complaint in this action. On January
15 18, 2019, CEH filed the First Amended Complaint, naming Settling Defendant as a defendant in the
16 action with respect to acrylamide exposures from certain products (but not the Covered Products).
17 On May 21, 2019, CEH filed the Complaint, adding Proposition 65 claims against Settling
18 Defendant with respect to acrylamide exposures from Covered Products under the Clancy brand.
19 Upon entry of this Consent Judgment, the Complaint shall be deemed amended *nunc pro tunc* to
20 assert claims under Proposition 65 for alleged exposures to acrylamide as to all Covered Products.

21 2.6 ALDI denies CEH's claim that ALDI has failed to comply with Proposition 65 and
22 maintains that it has provided clear and reasonable warnings under Proposition 65 during the statute
23 of limitations period for the Covered Products.

24 2.7 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
26 over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in the County

1 of Alameda, and that this Court has jurisdiction to enter and enforce this Consent Judgment as a full
2 and final resolution of all claims which were or could have been raised in the Complaint based on
3 the facts alleged therein with respect to Covered Products manufactured, distributed, and/or sold by
4 Settling Defendant. The Parties agree and acknowledge that this Consent Judgment does not
5 resolve CEH’s claims in the Complaint against Settling Defendant with respect to acrylamide
6 exposures from hash brown potato products or French-fried potatoes.

7 2.8 Nothing in this Consent Judgment is or shall be construed as an admission by the
8 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with
9 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
10 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
11 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
12 other pending or future legal proceedings. This Consent Judgment is the product of negotiation and
13 compromise and is accepted by the Parties solely for purposes of settling, compromising, and
14 resolving issues disputed in this Action.

15 **3. INJUNCTIVE RELIEF**

16 3.1 **Reformulation of Covered Products.** Beginning on the Compliance Date, Settling
17 Defendant shall not purchase, manufacture, ship, sell, or offer for sale Covered Products that will be
18 sold or offered for sale in California that exceed the following acrylamide concentration levels
19 (collectively, the “Reformulation Levels”), such concentration to be determined by use of a test
20 performed by an accredited laboratory using either GC/MS (Gas Chromatograph/Mass
21 Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), or any other testing
22 method agreed upon by the Parties, unless Settling Defendant complies with the warning
23 requirements of Section 3.2:

24 3.1.1 For Sliced Chips:

25 3.1.1.1 The average acrylamide concentration shall not exceed 281 parts per
26 billion (“ppb”) by weight (the “Sliced Chips Average Level”). The Sliced Chips Average Level is

1 determined by randomly selecting and testing at least 1 sample each from 5 different lots of a
2 particular type of Covered Product that is a Sliced Chip (or the maximum number of lots available
3 for testing if less than 5) during a testing period of at least 60 days.

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

7 3.1.2 For Extruded Products:

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

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

16 3.2 **Clear and Reasonable Warnings.** A Covered Product purchased, manufactured,
17 shipped, sold, or offered for sale by Settling Defendant after the Compliance Date may, as an
18 alternative to meeting the Reformulation Levels set forth in Section 3.1, thereafter be sold or offered
19 for sale in California with a warning that complies with the provisions of this Section 3.2 (a “Clear
20 and Reasonable Warning”).

21 3.2.1 **Language of Warning.** Irrespective of the method used to provide the
22 warning, a Clear and Reasonable Warning under this Consent Judgment shall state the following:

23 **WARNING:** Consuming this product can expose you to chemicals including acrylamide,
24 which is known to the State of California to cause cancer [and birth defects or other
25 reproductive harm]. [Acrylamide is a chemical that can form in some foods during high-

1 temperature cooking processes, such as frying, roasting, and baking.] For more information
2 go to www.P65Warnings.ca.gov/food.

3 The word “WARNING” shall be displayed in all capital letters and bold print. The bracketed terms
4 may be provided at ALDI’s option.

5 3.2.2 **Method of Warning.** A Clear and Reasonable Warning under this Consent
6 Judgment shall be provided by one or more of the following methods, as specified below:

7 3.2.2.1 **Product Labeling or Packaging.** For Covered Products sold in
8 stores where the consumer is physically present, the warning statement shall be displayed on the
9 Covered Product’s label or packaging unless Aldi complies with Section 3.2.2.3. The warning on
10 the label or packaging must be set off from other surrounding information and enclosed in a text
11 box. The warning statement shall be in a type size no smaller than the largest type used for other
12 Consumer Information on the Covered Product’s label or packaging, and in any case must be no
13 smaller than 6-point type. For purposes of this Section 3.2, the term “Consumer Information” has
14 the same meaning as in 27 Cal. Code Regs. § 25600.1(d).

15 3.2.2.2 **Internet or Catalog Sales.** If ALDI offers the Covered Products for
16 sale in California through the internet or a catalog where the consumer is not physically present, the
17 warning statement shall be displayed by including either the warning statement or a clearly marked
18 hyperlink using the word “WARNING” on the display page for the Covered Product, or by
19 otherwise prominently displaying the warning statement in such a manner that it is likely to be read
20 and understood by an ordinary individual prior to the authorization of or actual payment. If an on-
21 product warning is provided pursuant to Section 3.2.2.1, a separate warning statement must still be
22 displayed on the website or catalog. To comply with this Section 3.2.2.2 for sales of Covered
23 Products offered by Settling Defendant on another company’s website, Settling Defendant may rely
24 on the notification procedure set out in Title 27, California Code of Regulations, section 25600.2.

25 3.2.2.3 **In-store signs or shelf tags.** In the alternative to Section 3.2.2.1, the
26 warning statement may be displayed on a sign, shelf tag, or price card that is visible at each point of
27

1 display of the Covered Product under all lighting conditions normally encountered during business
2 hours. If the warning statement is provided in the price card, the warning statement shall be
3 displayed in a font size that is at least 9-point type. The warning statement under this Section
4 3.2.2.3 must be provided in a manner that associates it with the Covered Product to which the
5 warning applies. The Parties agree that the warning that appears on the attached Exhibit A is an
6 example of a Clear and Reasonable Warning that, if displayed in a store in accordance with the
7 other provisions of this Consent Judgment, complies with this Section 3.2.2.3.

8 3.2.2.4 **General requirements for all warnings.** Irrespective of which
9 method is used, the warning under this Section 3.2 shall be prominently displayed with such
10 conspicuousness, as compared with other words, statements or designs as to render it likely to be
11 read and understood by an ordinary individual prior to sale. The Parties agree and acknowledge that
12 compliance with Section 3.2.2.3 above satisfies this requirement. In addition, if the warning
13 statement is provided in a sign, label, or shelf tag, or price tag where Consumer Information in a
14 language other than English also appears, the warning statement must also be provided in that
15 language on the sign, label, shelf tag, or price tag, as applicable, in addition to English.

16 3.2.3 **Compliance review.** If ALDI provides warnings under Section 3.2.2.3,
17 beginning on the Compliance Date, and continuing for a minimum of three years thereafter, a
18 compliance review of ALDI's California stores shall be performed by or for ALDI to determine
19 whether ALDI is compliance with the requirements of Sections 3.2. A compliance review shall be
20 documented and shall note at a minimum, on a per store basis: (i) any deficiencies regarding
21 compliance with Section 3.2; (ii) the date those deficiencies were discovered; (iii) and the date by
22 which the deficiencies were corrected. All documentation regarding this compliance review shall
23 be retained by ALDI for at least one year.

24 3.3 The warning requirements set forth herein are imposed pursuant to the terms of this
25 Consent Judgment and are recognized by the Parties as not being the exclusive manner of providing
26 a warning for the Covered Products. Warnings may be provided as specified in the Proposition 65

1 regulations applicable to foods and supplements in effect as of the Effective Date (Title 27,
2 California Code of Regulations, section 25600, *et seq.*) or as such regulations may be amended in
3 the future.

4 **4. ENFORCEMENT**

5 **4.1 General Enforcement Provisions.** CEH may, by motion or application for an order
6 to show cause before this Court, enforce the terms and conditions contained in this Consent
7 Judgment. Any action relating to alleged non-compliance with Section 3 by Settling Defendant
8 shall be brought exclusively pursuant to this Section 4, and be subject to the meet and confer
9 requirement of Section 4.2.5, if applicable. This Consent Judgment shall be CEH's exclusive
10 means of enforcing Proposition 65 with respect to acrylamide exposures from the Covered
11 Products.

12 **4.2 Enforcement of Reformulation Commitment**

13 **4.2.1 Notice of Violation.** In the event that CEH purchases a Covered Product in
14 California after the Compliance Date and for which CEH has laboratory test results showing that the
15 Covered Product has an acrylamide level exceeding the applicable unit level in Section 3.1.1.2 or
16 3.1.2.2, and which lacks a Clear and Reasonable Warning that complies with Section 3.2, then CEH
17 may issue a Notice of Violation pursuant to this Section.

18 **4.2.2 Service of Notice of Violation and Supporting Documentation.**

19 **4.2.2.1** The Notice of Violation shall be sent to the person(s) identified in
20 Section 8.2 to receive notices for Settling Defendant, and must be served within sixty (60) days of
21 the date the Covered Product at issue was purchased or otherwise acquired by CEH, provided,
22 however, that CEH may have up to an additional sixty (60) days to send the Notice of Violation if,
23 notwithstanding CEH's good faith efforts, the test data required by Section 4.2.2.2 below cannot be
24 obtained by CEH from its laboratory before expiration of the initial sixty (60) day period.

25 **4.2.2.2** The Notice of Violation shall, at a minimum, set forth: (a) the date the
26 Covered Product was purchased; (b) a description of the Covered Product giving rise to the alleged

1 violation, including the name and address of the retail location from which the sample was obtained
2 and if available information that identifies the product lot; (c) all test data obtained by CEH
3 regarding the Covered Product and supporting documentation sufficient for validation of the test
4 results, including any laboratory reports, quality assurance reports, and quality control reports
5 associated with testing of the Covered Product; and (d) photographs and any other relevant facts and
6 available, non-privileged evidence supporting any claim by CEH that no Clear and Reasonable
7 Warning was provided.

8 4.2.3 Notice of Election of Response. No more than sixty (60) days after
9 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to
10 CEH whether or not it elects to contest the allegations contained in a Notice of Violation (“Notice
11 of Election”). Failure to provide a Notice of Election within sixty (60) days of effectuation of
12 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.

13 4.2.4 If a Notice of Violation is contested, the Notice of Election shall include all
14 then-available non-privileged documentary evidence regarding the alleged violation, including all
15 available test data. If a Settling Defendant or CEH later acquires additional test or other non-
16 privileged data regarding the alleged violation, it shall notify the other Party and promptly provide
17 all such non-privileged data or information to the Party.

18 4.2.5 Meet and Confer. If a Notice of Violation is contested, CEH and Settling
19 Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of
20 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw the
21 original Notice of Election contesting the violation and serve a new Notice of Election to not
22 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay
23 \$2,500 in addition to any payment required under this Consent Judgment. At any time, CEH may
24 withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the result shall be as
25 if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of
26 Violation results within thirty (30) days of a Notice of Election to contest, CEH may file an

1 enforcement motion or application pursuant to Section 4.1. The Parties may extend this thirty (30)
2 day time period by stipulation. In any enforcement proceeding, CEH may seek whatever fines,
3 costs, penalties, attorneys' fees, or other remedies are provided by law for failure to comply with the
4 Consent Judgment.

5 4.2.6 Non-Contested Notices. If Settling Defendant elects to not contest the
6 allegations in a Notice of Violation, it shall undertake corrective action(s) and make payments, if
7 any, as set forth below.

8 4.2.6.1 Settling Defendant shall include in its Notice of Election a detailed
9 description with supporting documentation of the corrective action(s) that it has undertaken or
10 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,
11 provide reasonable assurance that all Covered Products having the same lot number or lot code as
12 that of the Covered Product identified in CEH's Notice of Violation (the "Noticed Covered
13 Products") will not be thereafter be sold or offered for sale in California or, if applicable, that a
14 Clear and Reasonable Warning shall be provided to correct the warning deficiencies alleged in the
15 Notice of Violation. Settling Defendant shall make available to CEH for inspection and copying
16 records of non-privileged correspondence sufficient to show market withdrawal of the Noticed
17 Covered Products to the extent it has such documents on file.

18 4.2.6.2 If the Notice of Violation is based on a violation of the applicable unit
19 level in Section 3.1.1.2 or 3.1.2.2 with respect to a single Covered Product, Settling Defendant will
20 be excused from the market withdrawal obligation if Settling Defendant produce test results or other
21 evidence showing that the Noticed Covered Products comply with the applicable average level in
22 Section 3.1.1.1 or 3.1.2.1. However, to avail itself of this provision, Settling Defendant must
23 provide CEH with all non-privileged acrylamide test data in its possession, custody, or control
24 pertaining to the type of Covered Product at issue in the Notice of Violation that was performed
25 within the year prior to Settling Defendant producing test results to CEH under this Section 4.2.6.1.
26

1 If there is a dispute over whether Settling Defendant is excused from the corrective action, Settling
2 Defendant and CEH shall meet and confer before seeking any remedy in court.

3 4.2.6.3 Settling Defendant may respond to a Notice of Violation with an
4 election not to contest that includes documentation to CEH demonstrating that (i) ALDI had
5 conducted a compliance review for the Covered Product at issue under Section 3.2.4 for the store
6 identified the Notice of Violation during the year prior to CEH's issuance of the Notice of
7 Violation; (ii) ALDI timely corrected any deficiencies relevant to Section 3.2 noted in such
8 compliance review for the Covered Product and store at issue in the Notice of Violation; and (iii)
9 ALDI timely corrected any deficiencies relevant to Section 3.2 alleged by CEH for the Covered
10 Product and store at issue in the Notice of Violation. If there is a dispute over whether Settling
11 Defendant's response demonstrates compliance with this section, Settling Defendant and CEH shall
12 meet and confer before seeking any remedy in court.

13 4.2.6.4 If the Notice of Violation is the first, second, third, or fourth Notice of
14 Violation received by Settling Defendant under Section 4.2.1 that was not successfully contested or
15 withdrawn, then Settling Defendant shall pay \$15,000 for each Notice of Violation. Except as
16 otherwise provided in this Section 4, this shall be the sole and exclusive remedy for such violation.
17 If Settling Defendant has received more than four (4) Notices of Violation under Section 4.2.2 that
18 were not successfully contested or withdrawn, then Settling Defendant shall pay \$25,000 for each
19 subsequent Notice of Violation. If Settling Defendant produces with its Notice of Election test data
20 for the specific SKU, or comparative like items, that reasonably demonstrate predicted acrylamide
21 levels below the applicable unit level in Section 3.1.1.2 or 3.1.2.2, then any payment under this
22 Section shall be reduced by 100 percent (100%) for the first Notice of Violation, by seventy-five
23 percent (75%) for the second Notice of Violation, and by fifty percent (50%) for any subsequent
24 Notice of Violation. If Settling Defendant is excused from the market withdrawal obligation
25 pursuant to Section 4.2.6.2, or provides documentation that satisfies Section 4.2.6.3 then Settling
26 Defendant shall pay \$2,500 for that Notice of Violation. In no case shall Settling Defendant be

1 obligated to pay more than \$100,000 for uncontested Notices of Violation in any calendar year
2 irrespective of the total number of Notices of Violation issued.

3 4.2.6.5 In no case shall CEH issue more than one Notice of Violation per
4 manufacturing lot of a type of Covered Product or per store visited in any 90-day period. CEH shall
5 be limited to issuing no more than two total Notices of Violation to Settling Defendant in the first
6 twelve months after the Compliance Date.

7 4.2.7 Payments. Any payments under Section 4.2 shall be made by check
8 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a
9 Notice of Election triggering a payment and which shall be used as reimbursement for costs for
10 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse attorneys’
11 fees and costs incurred in connection with these activities, and shall be the extent of all monetary
12 remedies available to CEH under this Consent Judgment for a non-contested Notice of Violation.

13 4.3 **Repeat Violations.** If Settling Defendant has received five (5) or more Notices of
14 Violation concerning the same type of Covered Product that were not successfully contested or
15 withdrawn, as to the fifth (5th) and subsequent Notices of Violation, at CEH’s option, CEH may
16 seek from Settling Defendant whatever fines, costs, penalties, attorneys’ fees, or other remedies that
17 are provided by law for failure to comply with the Consent Judgment. Prior to seeking such relief,
18 CEH shall meet and confer with Settling Defendant for at least thirty (30) days to determine if
19 Settling Defendant and CEH can agree on measures that Settling Defendant can undertake to
20 prevent future violations.

21 **5. PAYMENTS**

22 5.1 **Payments by Settling Defendant.** Within fifteen (15) calendar days of the Effective
23 Date, Settling Defendant shall pay the total sum of \$127,500 as a settlement payment as further set
24 forth in this Section.

25 5.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall
26 be paid in five (5) separate checks in the amounts specified below and delivered as set forth below.

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

8 5.2.1 \$17,200 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).

9 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §
10 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
11 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment
12 for \$12,900 shall be made payable to OEHHA and associated with taxpayer identification number
13 68-0284486. This payment shall be delivered as follows:

14 For United States Postal Service Delivery:

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

20 For Non-United States Postal Service Delivery:

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

26 The CEH portion of the civil penalty payment for \$4,300 shall be made payable to
27 the Center For Environmental Health and associated with taxpayer identification number 94-
28 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
Francisco, CA 94117.

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

3 **6.3 Warnings From Other Settlements.** To the extent Settling Defendant elects to
4 warn pursuant to Section 3.2, Settling Defendant may seek to modify this Consent Judgment to
5 substitute different warning language or methods approved by a court in a future consent judgment
6 or judgment for exposures to acrylamide in snack food products (provided Settling Defendant only
7 seeks to use such language and methods to a comparable manner of sale of the Covered Products)
8 (*e.g.*, internet warnings will only be used for internet sales). If Settling Defendant seeks to exercise
9 this option, it shall provide notice to CEH, and the Parties shall meet and confer, pursuant to this
10 Section 6. If the Parties cannot resolve the dispute informally during such meet and confer, Settling
11 Defendant may file a motion to modify the Consent Judgment, and the Court shall approve the
12 requested modification unless it finds that the proposed warning language or method does not
13 comply with Proposition 65.

14 **6.4 Change in Proposition 65.** If Proposition 65 or its implementing regulations
15 (including but not limited to the “safe harbor no significant risk level” for acrylamide set forth at
16 Cal. Code Regs., tit. 27, section 25705, subdivision (c)(2) or any “alternative risk level” adopted by
17 regulation or court decision) are changed from their terms as they exist on the date of entry of this
18 Consent Judgment in a manner that impacts the Reformulation Levels, or if OEHHA takes some
19 other final regulatory action for products similar to the Covered Products in a manner that impacts
20 the Reformulation Levels or determines that warnings for acrylamide are not required for such
21 products, then Settling Defendant may seek to modify this Consent Judgment to modify the
22 Reformulation Levels. The Parties recognize that the Reformulation Levels are based on a
23 compromise of a number of issues, and that a change to the “safe harbor no significant risk level”
24 for acrylamide would not necessarily entitle a Party to a modification of the terms of this Consent
25 Judgment corresponding to a linear relationship with such a change.

26 **6.5 Other Court Decisions.** If a final decision of a court determines that warnings for
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1 acrylamide exposures or that enforcement of Proposition 65 claims for acrylamide exposures are
2 preempted or otherwise unlawful or unconstitutional with respect to products similar to the Covered
3 Products, then Settling Defendant may move to modify this Consent Judgment to conform to such
4 ruling in order to avoid unfair, inconsistent, or anti-competitive results.

5 **6.6 Federal Agency Action and Preemption.** If a court of competent jurisdiction or an
6 agency of the federal government, including, but not limited to, the U.S. Food and Drug
7 Administration, states through any guidance, regulation or legally binding act that federal law has
8 preemptive effect on any of the requirements of this Consent Judgment, then this Consent Judgment
9 may be modified in accordance with the procedure for noticed motions set forth in Section 6.1 to
10 bring it into compliance with or avoid conflict with federal law. Any such modification shall be
11 limited to those changes that are necessary to bring this Consent Judgment into compliance with or
12 avoid conflict with federal law.

13 **6.7** Before filing any motion to modify the Consent Judgment, Settling Defendant shall
14 provide written notice to CEH to initiate the meet and confer procedure in Section 6.2. If the
15 Parties do not agree on the proposed modification during informal meet and confer efforts, Settling
16 Defendant may file a motion to modify the Consent Judgment within sixty (60) days of the date of
17 the written notice that Settling Defendant provides to CEH under this Section 6.

18 **7. CLAIMS COVERED AND RELEASE**

19 **7.1** Provided that Settling Defendant complies in full with its obligations under Section 5
20 hereof, this Consent Judgment is a full, final, and binding resolution between CEH on behalf of
21 itself and the public interest and Settling Defendant and Settling Defendant's parents, subsidiaries,
22 affiliated entities that are under common ownership, directors, officers, employees, agents,
23 shareholders, successors, assigns, and attorneys ("Defendant Releasees"), and all entities to which
24 Settling Defendant directly or indirectly distributes or sells Covered Products, franchisees,
25 licensors, and licensees ("Downstream Defendant Releasees"), of any violation of Proposition 65
26 based on failure to warn about alleged exposure to acrylamide contained in Covered Products that

1 were sold, distributed, or offered for sale by Settling Defendant prior to the Compliance Date. The
2 Defendant Releasees and Downstream Defendant Releasees are collectively referred to as the
3 “Releasees.”

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

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

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

23 7.4 Provided that Settling Defendant complies in full with its obligations under Section 5
24 hereof, this Consent Judgment resolves all claims CEH has asserted against any other company
25 under post-settlement Notices of Violation issued by CEH that are related to the Covered Products.
26

1 **8. PROVISION OF NOTICE**

2 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the notice
3 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 8.2 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 Sarah Esmaili
12 Arnold & Porter Kaye Scholer LLP
13 3 Embarcadero Center, Suite 1000
14 San Francisco, CA 94111
15 sarah.esmaili@apks.com

16 8.3 Any Party may modify the person and/or address to whom the notice is to be sent by
17 sending the other Parties notice by first class and electronic mail.

18 **9. COURT APPROVAL**

19 9.1 This Consent Judgment shall become effective upon the date signed by CEH and
20 Settling Defendant, whichever is later, provided, however, that CEH shall prepare and file a Motion
21 for Approval of this Consent Judgment and Settling Defendant shall support approval of such
22 Motion.

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
28 California.

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 14.2 This Consent Judgment shall apply to and be binding upon CEH and Settling
6 Defendant, and their respective divisions, subdivisions, and subsidiaries, and the successors or
7 assigns of any of them.

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

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

15 **16. COMPLIANCE WITH REPORTING REQUIREMENTS**

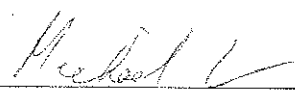
16 16.1 CEH agrees to comply with the reporting form requirements referenced in Health
17 and Safety Code section 25249.7(f).

18 **17. EXECUTION IN COUNTERPARTS**

19 17.1 The stipulations to this Consent Judgment may be executed in counterparts and by
20 means of facsimile or portable document format (pdf), which taken together shall be deemed to
21 constitute one document.

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IT IS SO STIPULATED:

Dated: <u>9/27</u> , 2019	CENTER FOR ENVIRONMENTAL HEALTH  _____ Signature <u>Michael Green</u> _____ Printed Name <u>CEO</u> _____ Title
Dated: _____, 2019	ALDI, INC. _____ Signature _____ Printed Name _____ Title

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

Dated: 12/3/2019

MICHAEL MARKMAN

Judge of the Superior Court

1 **IT IS SO STIPULATED:**

2 3 Dated: _____, 2019 4 5 6 7 8 9 10 11	CENTER FOR ENVIRONMENTAL HEALTH _____ Signature _____ Printed Name _____ Title
12 13 Dated: <u>9/25</u> , 2019 14 15 16 17 18 19 20 21	ALDI, INC. <u>Joan M Kavanaugh</u> Signature <u>Joan M Kavanaugh</u> Printed Name <u>Vice President</u> Title

22
23 **IT IS SO ORDERED, ADJUDGED,**
24 **AND DECREED**

25 Dated: _____
26 _____
27 Judge of the Superior Court

EXHIBIT A

[Product Name]

7D

99¢

0.51 oz.

\$2.00 per oz.

51976

WARNING: Consuming this product can expose you to chemicals including acrylamide which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65warnings.ca.gov/food. This notice is required by the State of California.

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