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13 CENTER FOR ENVIRONMENTAL HEALTH

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

14 CENTER FOR ENVIRONMENTAL
15 HEALTH, a non-profit corporation,
16
17 Plaintiff,
18
19 v.
20 THINK FOOD GROUP LLC, et al.
21
22 Defendants.

Case No. RG 17-881940

**NOTICE OF ENTRY OF ORDER AND
CONSENT JUDGMENT**

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

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

- 3 1. Order Granting the Parties' Consent Judgment as to Defendant Saratoga Potato Chips,
4 LLC, a true and correct copy of which is attached hereto as Exhibit 1.
5 2. Consent Judgment as to Saratoga Potato Chips, LLC, a true and correct copy of which
6 is attached hereto as Exhibit 2.

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10 Dated: July 29, 2020

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Respectfully submitted,

LEXINGTON LAW GROUP

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Joseph Mann
Attorney for Plaintiff
Center for Environmental Health

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Exhibit 1

1 On July 17, at 10:00 a.m., Plaintiff Center for Environmental Health's ("CEH") Motion
2 for Court Approval and Entry of Consent Judgment as to Defendant Saratoga Potato Chips, LLC
3 came on regularly for hearing before this Court in Department 21, the Honorable Winifred Y.
4 Smith presiding. After full consideration of the points and authorities and related pleadings
5 submitted, the Court rules as follows:

6 IT IS HEREBY ORDERED that Plaintiff's Motion for Court Approval and Entry of
7 Consent Judgment is GRANTED. Pursuant to and in accordance with Health & Safety Code §
8 25249.7(f)(4), the Court makes the following findings with respect to the Consent Judgment
9 between CEH and Defendant Saratoga Potato Chips, LLC:

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

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

18
19 **IT IS SO ORDERED.**

20
21 Dated: July 28, 2020



22 JUDGE OF THE SUPERIOR COURT

Exhibit 2



20907608

FILED
ALAMEDA COUNTY

JUL 28 2020

CLERK OF THE SUPERIOR COURT
By *[Signature]* Deputy

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

CENTER FOR ENVIRONMENTAL
HEALTH,

Plaintiff,

v.

THINK FOOD GROUP LLC, *et al.*,

Defendants.

) Case No. RG 17-881940

) ~~PROPOSED~~ CONSENT JUDGMENT
) AS TO SARATOGA POTATO CHIPS,
) LLC

1. DEFINITIONS

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

1.2 "Covered Products" means sliced potato chips that are manufactured, distributed, or sold by Saratoga Potato Chips, LLC ("Settling Defendant").

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

2. INTRODUCTION

2.1 The Parties to this Consent Judgment are the Center for Environmental Health, a California non-profit corporation ("CEH") and Saratoga Potato Chips, LLC. CEH and Settling Defendant (collectively, the "Parties" and individually, a "Party") enter into this

1 Consent Judgment to settle certain claims asserted by CEH against Settling Defendant as set
2 forth in the Complaint in the above-captioned matter.

3 2.2 On or about November 8, 2017, CEH provided a 60-day Notice of Violation of
4 Proposition 65 to the California Attorney General, to the District Attorneys of every county in
5 California, to the City Attorneys of every California city with a population greater than
6 750,000, and to Settling Defendant in which CEH alleged that Settling Defendant violated
7 Proposition 65 by exposing persons to acrylamide contained in Covered Products without first
8 providing a clear and reasonable Proposition 65 warning.

9 2.3 Settling Defendant is a business entity that manufactures, distributes, sells, or
10 offers for sale Covered Products that are sold in the State of California or has done so in the
11 past.

12 2.4 On November 9, 2017, CEH filed the original complaint in the above-captioned
13 matter. On December 22, 2017, CEH filed the Complaint. On January 19, 2018, CEH filed an
14 amendment to the Complaint pursuant to California Code of Civil Procedure § 474, naming
15 Settling Defendant as a defendant.

16 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
17 has jurisdiction over the allegations of violations contained in the operative Complaint and
18 personal jurisdiction over Settling Defendant as to the acts alleged in the operative Complaint,
19 that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and
20 enforce this Consent Judgment as a full and final resolution of all claims which were or could
21 have been raised in the operative Complaint based on the facts alleged therein with respect to
22 Covered Products manufactured, distributed, and/or sold by Settling Defendant.

23 2.6 Nothing in this Consent Judgment is or shall be construed as an admission by
24 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall
25 compliance with the Consent Judgment constitute or be construed as an admission by the
26 Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this
27 Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense
28 the Parties may have in any other pending or future legal proceedings. This Consent Judgment

1 is the product of negotiation and compromise and is accepted by the Parties solely for purposes
2 of settling, compromising, and resolving issues disputed in this Action.

3 **3. INJUNCTIVE RELIEF**

4 **3.1 Reformulation of Covered Products.** Except as provided in Section 3.2, on
5 and after the Effective Date, Settling Defendant shall not purchase or manufacture Covered
6 Products that will thereafter be offered for sale in California that exceed the following
7 acrylamide concentration levels (the "Reformulation Levels"):

8 3.1.1.1 The average acrylamide concentration shall not exceed 281 parts
9 per billion ("ppb") by weight (the "Average Level"). The Average Level is determined by
10 randomly selecting and testing at least one (1) sample each from at least three (3) and up to ten
11 (10) different lots of a particular Covered Product (or the maximum number of lots available
12 for testing if fewer than three) during a testing period of 60 days. The mean and standard
13 deviation shall be calculated using the sampling data. Any data points that are more than three
14 standard deviations outside the mean shall be discarded, and the mean and standard deviation
15 recalculated using the remaining data points. The mean determined in accordance with this
16 procedure shall be deemed the "Average Level."

17 3.1.1.2 The acrylamide concentration of any individual unit of Covered
18 Products shall not exceed 350 ppb by weight, based on a representative composite sample
19 taken from the individual unit being tested (the "Unit Level"). Testing for acrylamide shall be
20 performed using either GC/MS (Gas Chromatography/Mass Spectrometry), LC-MS/MS
21 (Liquid Chromatograph-Mass Spectrometry/Mass Spectrometry), or any other testing method
22 agreed upon by the Parties to this Consent Judgment.

23 **3.2 Covered Products purchased or manufactured by Settling Defendant on and after**
24 **the Effective Date that will thereafter be offered for sale in California may, as an alternative to**
25 **meeting the Reformulation Levels set forth in Section 3.1, comply with the warning**
26 **requirements under this Section 3.2.**

27 3.2.1 The warning shall contain the following statement or any substantially
28 similar language thereto:

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

4 The word “**WARNING**” shall be displayed in all capital letters and bold print. This warning
5 statement shall be prominently displayed on the Covered Product, on the packaging of the
6 Covered Product, or on a placard, shelf tag, or sign, provided that the statement is displayed with
7 such conspicuousness, as compared with other words, statements, or designs as to render it likely
8 to be read and understood by an ordinary individual prior to sale. If the warning statement is
9 displayed on the Covered Product’s label, it must be set off from other surrounding information
10 and enclosed in a text box. If the warning statement is displayed on a placard, shelf tag, or sign
11 where the Covered Product is offered for sale, the warning placard or sign must enable an
12 ordinary individual to easily determine which Covered Products the warning applies to, and to
13 differentiate between that Covered Product and other products to which the warning statement
14 does not apply. For sales by Settling Defendant on the internet or by catalog where the
15 consumer is not physically present, the warning statement shall be displayed in such a manner
16 that it is likely to be read and understood by an ordinary individual prior to the authorization of
17 or actual payment.

18 3.2.2 The warning requirements set forth herein are imposed pursuant to the
19 terms of this Consent Judgment, and are recognized by the Parties as not being the exclusive
20 manner of providing a warning for the Covered Products. Warnings may be provided as
21 specified in the Proposition 65 regulations for food in effect as of the Effective Date (Title 27,
22 California Code of Regulations, section 25601, *et seq.*) or as such regulations may be amended
23 in the future. In addition, Settling Defendant may rely on the notification procedure set out in
24 Title 27, California Code of Regulations, section 25600.2.

25 **4. ENFORCEMENT**

26 4.1 **General Enforcement Provisions.** CEH may, by motion or application for an
27 order to show cause before this Court, enforce the terms and conditions contained in this
28 Consent Judgment. Any action to enforce alleged violations of Section 3 by Settling

1 Defendant shall be brought exclusively pursuant to this Section 4, and be subject to the meet
2 and confer requirement of Section 4.2.6 if applicable.

3 **4.2 Enforcement of Reformulation Commitment by CEH.**

4 4.2.1 Covered Product Identification. Within thirty (30) days after the
5 Effective Date, Settling Defendant shall notify CEH of a means sufficient to allow CEH to
6 identify Covered Products supplied or offered by Settling Defendant for sale on or after that date
7 by, for example, a unique brand name or characteristic system of product numbering or labeling.
8 Upon written request by CEH, but no more than once in any calendar year, Settling Defendant
9 shall, within thirty (30) days of receiving a request from CEH, update the information provided
10 to CEH pursuant to this Section 4.2.1 by notifying CEH of a means sufficient to allow CEH to
11 identify Covered Products currently supplied or offered for sale by Settling Defendant. If CEH
12 is unable to determine whether a particular product is a Covered Product as to Settling Defendant
13 based on the information provided to CEH pursuant to this Section 4.2.1, Settling Defendant
14 shall cooperate in good faith with CEH in determining whether the product at issue is a Covered
15 Product supplied or offered for sale by Settling Defendant. Information provided to CEH
16 pursuant to this Section 4.2.1, including but not limited to the identities of parties to contracts
17 between Settling Defendant and third parties, may be designated by Settling Defendant as
18 competitively sensitive confidential business information, and if so designated shall not be
19 disclosed to any person without the written permission of Settling Defendant. Any motions or
20 pleadings or any other court filings that may reveal information designated as competitively
21 sensitive confidential business information pursuant to this Section shall be submitted in
22 accordance with California Rules of Court 8.46 and 2.550, *et seq.*, if applicable. The provisions
23 of Section 4.2.1 shall sunset seven years after the Effective Date.

24 4.2.2 Notice of Violation. In the event that CEH purchases a Covered Product
25 in California that was manufactured, distributed, or sold by Settling Defendant and that has a
26 best-by or sell-by (or equivalent) date or other code that reflects that the Covered Product was
27 manufactured or purchased by Settling Defendant after the Effective Date, and for which CEH
28 has laboratory test results showing that the Covered Product exceeds the Unit Level, and which

1 lacks a warning that complies with Section 3.2, then CEH may issue a Notice of Violation
2 pursuant to this Section 4.2. If the manufacture or purchase date is not apparent from the dates
3 or coding used on the Covered Product label, CEH shall withdraw the Notice of Violation if
4 Settling Defendant demonstrates that the Covered Product at issue was manufactured or
5 purchased before the Effective Date. Notwithstanding the foregoing, CEH may not issue any
6 Notice of Violation if the packaging of the Covered Product is marked or labeled with the
7 statement "Not for Sale in California" or equivalent language so long as such statement is
8 prominently placed upon such Covered Product's label or other labeling, as compared with other
9 words or statements on the label or labeling, as to render it likely to be read and understood by
10 an ordinary individual under customer conditions of purchase or use. If Settling Defendant
11 marks or labels a Covered Product with such a statement, Settling Defendant shall include a
12 letter to each of its retailer or distributor customers receiving that Covered Product notifying the
13 customer that the Covered Product may not be sold in California.

14 4.2.3 Service of Notice of Violation and Supporting Documentation.

15 4.2.3.1 The Notice of Violation shall be sent to the person(s) identified
16 in Section 8.2 to receive notices for Settling Defendant, and must be served within sixty (60)
17 days of the later of the date the Covered Product at issue was purchased or otherwise acquired
18 by CEH or the date that CEH can reasonably determine that the Covered Product at issue was
19 manufactured, shipped, sold, or offered for sale by Settling Defendant, provided, however, that
20 CEH may have up to an additional sixty (60) days to send the Notice of Violation if,
21 notwithstanding CEH's good faith efforts, the test data required by Section 4.2.3.2 below
22 cannot be obtained by CEH from its laboratory before expiration of the initial sixty (60) day
23 period.

24 4.2.3.2 The Notice of Violation shall, at a minimum, set forth: (a) the
25 date the Covered Product was purchased; (b) the location at which the Covered Product was
26 purchased; (c) a description of the Covered Product giving rise to the alleged violation,
27 including the name and address of the retail entity from which the sample was obtained and
28 pictures of the product packaging from all sides, which identifies the product lot; and (d) all

1 test data obtained by CEH regarding the Covered Product and supporting documentation
2 sufficient for validation of the test results, including any laboratory reports, quality assurance
3 reports, and quality control reports associated with testing of the Covered Product.

4 4.2.4 Notice of Election of Response. No more than thirty (30) days after
5 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice
6 to CEH whether it elects to contest the allegations contained in a Notice of Violation (“Notice
7 of Election”). Failure to provide a Notice of Election within thirty (30) days of effectuation of
8 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.
9 Upon notice to CEH, Settling Defendant may have up to an additional sixty (60) days to elect
10 if, notwithstanding Settling Defendant’s good faith efforts, Settling Defendant is unable to
11 verify the test data provided by CEH before expiration of the initial thirty (30) day period.

12 4.2.5 If a Notice of Violation is contested, the Notice of Election shall
13 include all then-available non-privileged documents upon which Settling Defendant is relying
14 to contest the alleged violation, including all available acrylamide test data for Covered
15 Products with the same lot number as that of the Covered Product identified in CEH’s Notice
16 of Violation. If Settling Defendant or CEH later acquires additional test or other data
17 regarding the alleged violation during the meet and confer period described in Section 4.2.6, it
18 shall notify the other Party and promptly provide all such data or information to the Party
19 unless either the Notice of Violation or Notice of Election has been withdrawn.

20 4.2.6 Meet and Confer. If a Notice of Violation is contested, CEH and
21 Settling Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30)
22 days of serving a Notice of Election contesting a Notice of Violation, Settling Defendant may
23 withdraw the original Notice of Election contesting the violation and serve a new Notice of
24 Election to not contest the violation, provided, however, that, in this circumstance, Settling
25 Defendant shall pay \$2,500 in addition to any other payment required under this Consent
26 Judgment. At any time, CEH may withdraw a Notice of Violation, in which case for purposes
27 of this Section 4.2 the result shall be as if CEH never issued any such Notice of Violation. If
28 no informal resolution of a Notice of Violation results within thirty (30) days of a Notice of

1 Election to contest, CEH may file an enforcement motion or application pursuant to Section
2 4.1. In any such proceeding, CEH may seek whatever fines, costs, penalties, attorneys' fees,
3 or other remedies are provided by law for an alleged failure to comply with the Consent
4 Judgment.

5 4.2.7 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,
7 if any, as set forth below.

8 4.2.7.1 Settling Defendant shall include in its Notice of Election a
9 detailed description with supporting documentation of the corrective action(s) that it has
10 undertaken or proposes to undertake to address the alleged violation. Any such correction
11 shall, at a minimum, provide reasonable assurance that, with respect to all Covered Products
12 having the same lot number as that of the Covered Product identified in CEH's Notice of
13 Violation (the "Noticed Covered Products"), Settling Defendant has sent instructions to any
14 retailers or customers that offer the Noticed Covered Products for sale to cease offering the
15 Noticed Covered Products for sale to California consumers and to return all such Noticed
16 Covered Products to Settling Defendant if Settling Defendant has reason to believe the Noticed
17 Covered Products are still offered for sale to California consumers. Settling Defendant shall
18 make available to CEH for inspection and copying records of non-privileged correspondence
19 sufficient to show market withdrawal of the Noticed Covered Products to the extent it has such
20 documents on file. If the Notice of Violation is based on a violation of the Unit Level with
21 respect to a single Covered Product, Settling Defendant may be excused from the corrective
22 obligation described in the foregoing (but not the monetary payments, if any, required by this
23 Section 4) if Settling Defendant produces test results and other evidence that: (1) demonstrates
24 that the acrylamide levels found by CEH in the unit alleged to be in violation is an aberration;
25 and (2) otherwise provides reasonable assurance that the remainder of the Noticed Covered
26 Products, aside from the unit alleged to be in violation, comply with the Reformulation Levels.
27 The Parties agree that this Section 4.2.7.1 is satisfied if Settling Defendant can demonstrate
28 that the type of Covered Product at issue in the Notice of Violation satisfies the Average

1 Level. However, to avail itself of this provision, Settling Defendant must provide CEH with
2 all non-privileged acrylamide test data in its possession, custody, or control pertaining to the
3 type of Covered Product at issue in the Notice of Violation that was performed within the year
4 prior to the date of the Notice of Election. If there is a dispute over whether Settling
5 Defendant is excused from the corrective action, Settling Defendant and CEH shall meet and
6 confer before seeking any remedy in court. In no case shall CEH issue more than one Notice
7 of Violation per manufacturing lot of a type of Covered Product, nor shall CEH issue more
8 than two Notices of Violation in the first year following the Effective Date.

9 4.2.7.2 If the Notice of Violation is the first, second, third, or fourth
10 Notice of Violation received by Settling Defendant under Section 4.2.2 that was not
11 successfully contested or withdrawn, then Settling Defendant shall pay \$15,000 for each
12 Notice of Violation. If Settling Defendant has received more than four (4) Notices of
13 Violation under Section 4.2.2 that were not successfully contested or withdrawn, then Settling
14 Defendant shall pay \$25,000 for each Notice of Violation. If Settling Defendant produces
15 with its Notice of Election test data for the Covered Product that : (i) was conducted prior to
16 the date CEH gave Notice of Violation; (ii) was conducted on the same type of Covered
17 Product; and (iii) demonstrates acrylamide levels below the Unit Level, then any payment
18 under this Section shall be reduced by 100 percent (100%) for the first Notice of Violation, by
19 seventy-five percent (75%) for the second Notice of Violation, and by fifty percent (50%) for
20 any subsequent Notice of Violation. If Settling Defendant is excused from corrective action
21 pursuant to Section 4.2.7.1, then Settling Defendant shall pay \$2,500 for that Notice of
22 Violation. In no case shall Settling Defendant be obligated to pay more than \$100,000 for all
23 Notices of Violation not successfully contested or withdrawn in any calendar year irrespective
24 of the total number of Notices of Violation issued. In no case shall CEH issue more than one
25 Notice of Violation per manufacturing lot of a type of Covered Product or per store visited in
26 any 90-day period. CEH shall be limited to issuing no more than two total Notices of
27 Violation to Settling Defendant in the first twelve months after the Effective Date.
28

1 4.2.8 Payments. Any payments under Section 4.2 shall be made by check
2 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a
3 Notice of Election triggering a payment and shall be used as reimbursement for costs for
4 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse
5 attorneys’ fees and costs incurred in connection with these activities.

6 4.3 **Repeat Violations**. If Settling Defendant has received four (4) or more Notices
7 of Violation concerning the same type of Covered Product that were not successfully contested
8 or withdrawn in any two (2) year period then, at CEH’s option, CEH may seek whatever fines,
9 costs, penalties, attorneys’ fees, or other remedies that are provided by law for failure to
10 comply with the Consent Judgment. Prior to seeking such relief, CEH shall meet and confer
11 with Settling Defendant for at least thirty (30) days to determine if Settling Defendant and
12 CEH can agree on measures that Settling Defendant can undertake to prevent future alleged
13 violations.

14 **5. PAYMENTS**

15 5.1 **Payments by Settling Defendant**. Within ten (10) calendar days of the
16 Effective Date, Settling Defendant shall pay the total sum of \$135,000 as a settlement payment
17 as further set forth in this Section.

18 5.2 **Allocation of Payments**. The total settlement amount for Settling Defendant
19 shall be paid in five (5) separate checks in the amounts specified below and delivered as set
20 forth below. Any failure by Settling Defendant to comply with the payment terms herein shall
21 be subject to a stipulated late fee to be paid by Settling Defendant to CEH in the amount of
22 \$100 for each day the full payment is not received after the payment due date set forth in
23 Section 5.1. The late fees required under this Section shall be recoverable, together with
24 reasonable attorneys’ fees, in an enforcement proceeding brought pursuant to Section 4 of this
25 Consent Judgment. The funds paid by Settling Defendant shall be allocated as set forth below
26 between the following categories and made payable as follows:

27 5.2.1 \$18,230 as a civil penalty pursuant to Health & Safety Code §
28 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health &

1 Safety Code § 25249.12 (25% to CEH and 75% to the State of California’s Office of
2 Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of
3 the civil penalty payment for \$13,672.50 shall be made payable to OEHHA and associated
4 with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

5 For United States Postal Service Delivery:

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

11 For Non-United States Postal Service Delivery:

12 Attn: Mike Gyurics
13 Fiscal Operations Branch Chief
14 Office of Environmental Health Hazard Assessment
15 1001 I Street, MS #19B
16 Sacramento, CA 95814

17 The CEH portion of the civil penalty payment for \$4,557.50 shall be made payable to
18 the Center for Environmental Health and associated with taxpayer identification number 94-
19 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street,
20 San Francisco, CA 94117.

21 5.2.2 \$13,670 as an Additional Settlement Payment (“ASP”) to CEH pursuant
22 to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204.
23 CEH intends to restrict use of the ASPs received from this Consent Judgment to the following
24 purposes: the funds will be placed in CEH’s Toxics in Food Fund and used to support CEH
25 programs and activities that seek to educate the public about acrylamide and other toxic
26 chemicals in food, to work with the food industry and agriculture interests to reduce exposure
27 to acrylamide and other toxic chemicals in food, and to thereby reduce the public health
28 impacts and risks of exposure to acrylamide and other toxic chemicals in food sold in
California. CEH shall obtain and maintain adequate records to document that ASPs are spent
on these activities and CEH agrees to provide such documentation to the Attorney General
within thirty (30) days of any request from the Attorney General. The payment pursuant to

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

4 5.2.3 \$103,100 as a reimbursement of a portion of CEH's reasonable
5 attorneys' fees and costs (including but not limited to expert and investigative costs). The
6 attorneys' fees and cost reimbursement shall be made in two separate checks as follows: (a)
7 \$87,065 payable to the Lexington Law Group and associated with taxpayer identification
8 number 94-3317175; and (b) \$16,035 payable to the Center for Environmental Health and
9 associated with taxpayer identification number 94-3251981. These payments shall be
10 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

11 **6. MODIFICATION AND DISPUTE RESOLUTION**

12 6.1 **Modification.** This Consent Judgment may be modified from time to time by
13 express written agreement of the Parties, with the approval of the Court and prior notice to the
14 Attorney General's Office, or by an order of this Court upon motion and prior notice to the
15 Attorney General's Office and in accordance with law.

16 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
17 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to
18 modify the Consent Judgment.

19 6.3 **Warnings From Other Settlements.** To the extent Settling Defendant elects to
20 warn pursuant to Section 3.2, Settling Defendant may seek to modify this Consent Judgment to
21 substitute different warning language or methods approved by a court in a consent judgment or
22 judgment for exposures to acrylamide in snack food products (provided Settling Defendant only
23 seeks to use such language and methods to a comparable manner of sale of the Covered
24 Products) (*e.g.*, internet warnings will only be used for internet sales). If Settling Defendant
25 seeks to exercise this option, it shall provide notice to CEH, and the Parties shall meet and
26 confer, pursuant to this Section 6. If the Parties cannot resolve the dispute informally during
27 such meet and confer, Settling Defendant may file a motion to modify the Consent Judgment,
28 and the Court shall approve the requested modification unless it finds that the proposed warning

1 language or method does not comply with Proposition 65.

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

14 **6.5 Other Court Decisions.** If a final decision of a court determines that warnings
15 for acrylamide exposures or that enforcement of Proposition 65 claims for acrylamide exposures
16 are preempted or otherwise unlawful or unconstitutional with respect to products similar to the
17 Covered Products, then Settling Defendant may move to modify this Consent Judgment to
18 conform to such ruling in order to avoid unfair, inconsistent, or anti-competitive results.

19 **6.6 Federal Agency Action and Preemption.** If a court of competent jurisdiction or
20 an agency of the federal government, including, but not limited to, the U.S. Food and Drug
21 Administration, states through any guidance, regulation or legally binding act that federal law
22 has preemptive effect on any of the requirements of this Consent Judgment, then this Consent
23 Judgment may be modified in accordance with the procedure for noticed motions set forth in
24 Section 6.1 to bring it into compliance with or avoid conflict with federal law. Any such
25 modification shall be limited to those changes that are necessary to bring this Consent Judgment
26 into compliance with or avoid conflict with federal law.

27 **6.7** Before filing any motion to modify the Consent Judgment, Settling Defendant
28 shall provide written notice to CEH to initiate the meet and confer procedure in Section 6.2. If

1 the Parties do not agree on the proposed modification during informal meet and confer efforts,
2 Settling Defendant may file a motion to modify the Consent Judgment within sixty (60) days of
3 the date of the written notice that Settling Defendant provides to CEH under this Section 6.

4 **7. CLAIMS COVERED AND RELEASE**

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

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

24 7.3 Provided that Settling Defendant complies in full with its obligations under
25 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant
26 shall constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and
27 Downstream Defendant Releasees with respect to any alleged failure to warn about acrylamide
28 in Covered Products manufactured, distributed, or sold by Settling Defendant on and after the

1 Effective Date.

2 **8. PROVISION OF NOTICE**

3 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
4 notice shall be sent by first class and electronic mail to:

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

10 8.2 When Settling Defendant is entitled to receive any notice under this Consent
11 Judgment, the notice shall be sent by first class and electronic mail to:

12 Mark GiaQuinta
13 Haller & Colvin
14 444 East Main Street
15 Fort Wayne, IN
16 mgiaquinta@hallercolvin.com

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

19 **9. COURT APPROVAL**

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

24 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
25 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
26 purpose other than to allow the Court to determine if there was a material breach of Section
27 9.1.

28 **10. APPLICATION OF CONSENT JUDGMENT**

29 10.1 Except as otherwise set forth herein, this Consent Judgment shall apply to and be
30 binding upon CEH and Settling Defendant and their respective divisions, subdivisions, and
31 subsidiaries, and the successors or assigns of any of them.

1 **11. GOVERNING LAW AND CONSTRUCTION**

2 11.1 The terms of this Consent Judgment shall be governed by the laws of the State
3 of 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
12 understanding of the Parties with respect to the entire subject matter hereof, and any and all
13 prior discussions, negotiations, commitments, or understandings related thereto, if any, are
14 hereby merged herein and therein. There are no warranties, representations, or other
15 agreements between the Parties except as expressly set forth herein. No representations, oral
16 or otherwise, express or implied, other than those specifically referred to in this Consent
17 Judgment have been made by any Party hereto. No other agreements not specifically
18 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
19 Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise,
20 shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are
21 expressly incorporated herein. No supplementation, modification, waiver, or termination of
22 this Consent Judgment shall be binding unless executed in writing by the Party to be bound
23 thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall
24 constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such
25 waiver constitute a continuing waiver.

26 **14. RETENTION OF JURISDICTION**

27 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
28 Consent Judgment. Notwithstanding the provisions of Section 6, nothing in this Consent

1 Judgment limits or affects the Court's authority to modify this Consent Judgment as provided
2 by law.

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

4 15.1 Each signatory to this Consent Judgment certifies that he or she is fully
5 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter
6 into and execute the Consent Judgment on behalf of the Party represented and legally to bind
7 that Party.


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

9 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
10 against an entity other than Settling Defendant on terms that are different than those contained
11 in this Consent Judgment. Settling Defendant may move to modify this Consent Judgment
12 pursuant to Section 6 to substitute higher Reformulation Levels that CEH agrees to in a future
13 consent judgment applicable to products identical to the Covered Products, and CEH agrees
14 not to oppose any such motion except for good cause shown.

15 **17. EXECUTION IN COUNTERPARTS**

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

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

21
22 Dated: July 28, 2020 
23 Judge of the Superior Court

24
25
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27
28

1 **PROOF OF SERVICE**

2
3 I, Owen Sutter, declare:

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

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

9 **NOTICE OF ENTRY OF ORDER AND CONSENT JUDGMENT**

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

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

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

17 *Please see attached service list*

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

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

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

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

26 

27 Owen Sutter

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

| ADDRESS | PARTY |
|---|--|
| <p>Howard Hirsch Joseph Mann Ryan Berghoff 503 Divisadero Street San Francisco, CA 94117 hhirsch@lexlawgroup.com jmann@lexlawgroup.com rberghoff@lexlawgroup.com</p> | <p><i>Plaintiff</i> Center for Environmental Health</p> |
| <p>Mark S. Pollock Evangeline James Pollock & James, LLP 1792 Second Street Napa, CA 94559 mpollock@pollockandjames.com ejames@pollockandjames.com</p> | <p><i>CEH v. Think Food Group</i> Saratoga Potato Chips, LLC</p> |
| <p>Mark E. Giaquinta Haller & Colvin, P.C. 444 East Main Street Fort Wayne, IN 46802 MGiaquinta@hallercolvin.com</p> | <p><i>CEH v. Think Food Group</i> Saratoga Potato Chips, LLC</p> |
| <p>Thomas L. Van Wyngarden Pillsbury Winthrop Shaw Pittman LLP Stephanie Angkadjaja 725 South Figueroa Street, Suite 2800 Los Angeles, CA 90017 tom.vanwyngarden@pillsburylaw.com stephanie.angkadjaja@pillsburylaw.com</p> | <p><i>CEH v. Think Food Group</i> Jet.com, Inc. Wal-Mart Stores, Inc.</p> |
| <p>Krista M. Enns Rachel Chatman Benesch, Friedlander, Coplan & Aronoff LLP One Montgomery, Suite 2700 San Francisco, CA 94104-4505 kenns@beneschlaw.com rchatman@beneschlaw.com</p> | <p><i>CEH v. Think Food Group</i> Shearer's Foods, LLC Barrel O'Fun Snack Foods Co., LLC</p> |