

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ENVIRONMENTAL LAW FOUNDATION,

Plaintiff,

v.

BIRDS EYE FOODS, INC., et al.,

Defendants.

Case No. BC 356591 (LEAD CASE)

**[PROPOSED] CONSENT JUDGMENT
WITH BIRDS EYE FOODS, INC.;
POORE BROTHERS, INC.; SNYDER'S
OF HANOVER MFG., INC.; SNYDER'S
OF HANOVER SALES COMPANY;
AND ZAPPE ENDEAVORS, LLC**

Date: 5/9/09
Time: 10:00 a.m.
Dept: 309
Judge: Hon. Anthony J. Mohr
Complaint Filed: August 7, 2006

ENVIRONMENTAL LAW FOUNDATION,

Plaintiff,

v.

ALBERTSONS, LLC., et al.,

Defendants.

Case No. BC 384665

RELATED CASE

INTRODUCTION

1.1. On August 6, 2006, Plaintiff Environmental Law Foundation ("Plaintiff"), initiated this action ("ELF Action") for civil penalties and injunctive relief for violations of Proposition 65 in the Superior Court for the County of Los Angeles ("Complaint"). Plaintiff's Complaint named

1 several defendants, and alleged that each defendant failed to provide clear and reasonable warnings
2 that ingestion of potato chip and restructured crisp products at issue in the Complaint (the
3 “Products”), would result in exposure to acrylamide, a chemical known to the State of California to
4 cause cancer. The Complaint further alleges that under the Safe Drinking Water and Toxic
5 Enforcement Act of 1986, Health and Safety Code section 25249.6, also known as “Proposition 65,”
6 businesses must provide persons with a “clear and reasonable warning” before exposing individuals
7 to these chemicals, and that the defendants failed to do so.

8 1.2. Since August 26, 2005, the Attorney General for the State of California (“Attorney
9 General”) was also prosecuting a Proposition 65 enforcement action in Department 307 of this Court
10 against defendants Procter & Gamble Manufacturing Company, Procter & Gamble Distributing
11 Company, Frito-Lay, Inc., Lance, Inc., and Kettle Foods, Inc., arising from the presence of
12 acrylamide in those companies’ sliced potato chips and restructured potato crisps, in a case captioned
13 *People of the State of California v. Frito-Lay, Inc., et al.*, (Case No. BC 338956) (the “AG Action”).
14 None of the defendants in the AG Action are named in the ELF Action. On February 1, 2008, the
15 Court entered a consent judgment resolving the AG’s claims against the two Procter & Gamble
16 entities. (“P&G Settlements”). These consent judgments include injunctive relief, including
17 numerical acrylamide concentration targets and compliance dates for reduction of acrylamide levels
18 in restructured potato chips at issue in that action, and warning requirements for Products that do not
19 meet that target by the compliance dates. On August 1, 2008, the Court entered three consent
20 judgments in the AG Action, resolving the People’s claims against Frito-Lay, Inc., Lance, Inc., and
21 Kettle Foods, Inc. (“AG Settlements”). These consent judgments include injunctive relief, including
22 numerical acrylamide concentration targets and compliance dates for reduction of acrylamide levels
23 in sliced and restructured potato chips at issue in that action, and warning requirements for Products
24 that do not meet those targets by the compliance dates.

25 1.3 Included in the P&G Settlements and the AG Settlements are provisions describing the
26 requirements for signage (“AG Signage”) that may be used to provide Proposition 65 warnings for
27 noncompliant products in retail establishments in lieu of other warnings (i.e., on the product labels).
28 The language of AG Signage would not necessarily identify which brands, flavors or variants of

1 potato chip or crisp products are being warned about. While Plaintiff would not ordinarily view such
2 signage as satisfying the warning requirements of Proposition 65, Plaintiff acknowledges that: 1) by
3 order of the court in the AG Action, such signage satisfies the Proposition 65 warning requirements
4 for the potato chips and crisps at issue in that case; and 2) such signage might also act as a warning
5 for all potato chips and crisps, including those referenced in this settlement. Therefore, for purposes
6 of this case only, Plaintiff accepts and agrees that the AG Signage will satisfy Defendants' obligation
7 to provide a Proposition 65 warning when provided at the time and in the manner described in the
8 AG Settlements, if it meets the requirements of section 3.1(d) of this settlement.

9 1.4 On January 31, 2008, Plaintiff filed another complaint for civil penalties and
10 injunctive relief for violations of Proposition 65 in the Superior Court for the County of Los Angeles
11 naming several retailers ("Retailer Complaint"). The Retailer Complaint alleged that retail
12 defendants ("Retailers") violated Proposition 65 by failing to provide clear and reasonable warnings
13 that ingestion of potato chip products at issue in that Complaint, would expose consumers to
14 acrylamide.

15 1.5 Birds Eye Foods, Inc.; Poore Brothers, Inc.; Snyder's of Hanover Mfg., Inc.; Snyder's
16 of Hanover Sales Company; and Zappe Endeavors, LLC (collectively, "Settling Defendants") are
17 among the Defendants named in Plaintiff's Complaint.

18 1.6. Settling Defendants are corporations that employ more than 10 persons, and at some
19 time relevant to the allegations of the complaint manufactured Products, and shipped Products for
20 sale in California.

21 1.7. The Products included in this Consent Judgment are those sliced potato chips ("Chip
22 Products") and restructured crisps ("Crisp Products") of Settling Defendants' Products that were
23 referenced in Plaintiff's notice of violation of Proposition 65 sent to, *inter alia*, Settling Defendants
24 and the Attorney General, pursuant to Health and Safety Code section 25249.7 and are, or were
25 during times relevant to the Complaint, shipped for sale in California (collectively, Chip Products and
26 Crisp Products hereinafter "Covered Products.").

27 1.8. For purposes of this Consent Judgment only, Plaintiff and Settling Defendants
28 (collectively, the "Parties") stipulate that this Court has jurisdiction over the allegations of violations

1 contained in the Plaintiff's Complaint and personal jurisdiction over Settling Defendants as to the
2 acts alleged in the Plaintiff's Complaint, that venue is proper in the County of Los Angeles, and that
3 this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims
4 which were or could have been raised against Settling Defendants in the Complaint based on the facts
5 alleged therein.

6 1.9. Except as expressly set forth herein, the Plaintiff and Settling Defendants enter into
7 this Consent Judgment as a full and final settlement of all claims relating to Covered Products arising
8 from the failure to warn regarding the presence of acrylamide in such Products. Settling Defendants
9 deny the material factual and legal allegations contained in the Complaint and maintain that all
10 Products they have sold in California and/or shipped for sale in California (as that term is defined in
11 paragraph 2.2 below) have been and are in compliance with all laws. Nothing in this Consent
12 Judgment, including Settling Defendants' execution of the Consent Judgment and agreement to
13 provide the relief and remedies specified herein, shall be construed as an admission by Settling
14 Defendants of any fact, finding, issue of law, or violation of law, nor shall compliance with this
15 Consent Judgment constitute or be construed as an admission by Settling Defendants of any fact,
16 finding, conclusion, issue of law, or violation of law, such being specifically denied by Settling
17 Defendants. This Consent Judgment shall not be admissible in any action or proceeding except for
18 proceedings to enforce or modify this Consent Judgment as set forth herein. However, this Paragraph
19 shall not diminish or otherwise affect Settling Defendants' obligations, responsibilities and duties to
20 comply with this Consent Judgment.

21 1.10 It is the intent of the Parties that the terms of this Consent Judgment be interpreted,
22 implemented and modified in the same manner as the terms of the Settlements of the AG Action.

23 1.11. The effective date of this Consent Judgment shall be the date on which the Consent
24 Judgment is entered as a judgment by the trial Court ("Effective Date").

25 **2. INJUNCTIVE RELIEF: ACRYLAMIDE REDUCTION**

26 2.1. Target Level and Target Date.

27 (a) Settling Defendants shall reduce the level of acrylamide in all Covered Products after
28 December 31, 2011 (the "Target Date") to a weighted arithmetic mean of 281.6 parts per billion

1 (“ppb”) for sliced chip Products (“Chip Target Level”) and 490 ppb for Crisp Products (“Crisp Target
2 Level”) (collectively, Chip Target Level and Crisp Target Level referred to hereafter as the “Target
3 Levels”)¹, unless warnings are given pursuant to Section 3 below. For the purposes of this Consent
4 Judgment, the Settling Defendant shall not be considered to have achieved the applicable Target
5 Level if, as of the Compliance Date, the arithmetic mean of the acrylamide concentration in any
6 product line of Covered Products (e.g., low fat chips constitute a distinct “product line” from other
7 potato chips), as determined in accordance with the calculation method described *infra* at section 2.3,
8 exceeds the applicable Target Level by more than 25%. Any product line for which pre-Target Date
9 warnings have been provided in accordance with Section 3 shall not be included in any calculation
10 determining whether the applicable Target Level or the threshold set forth in this Section 2.1(a) has
11 been achieved.

12 (b) Each Settling Defendant shall endeavor, in good faith using all its commercially and
13 technologically reasonable efforts, to achieve by the Target Date the applicable Target Level in
14 Covered Products shipped for sale in California. However, at any time after the Effective Date, any
15 Settling Defendant may, at its sole discretion, abandon its good faith efforts to achieve the applicable
16 Target Level set forth in this section 2.1 for any or all Covered Products. Within 30 days of reaching
17 a decision to abandon such good faith efforts, such Settling Defendant shall notify Plaintiff in writing
18 and may, at its sole discretion, comply with this provision by either (a) providing warnings consistent
19 with the requirements of Section 3 below for all such affected Covered Products or, (b) taking all
20 commercially reasonable steps to ensure that such affected Covered Products are, from the date of the
21 decision, not shipped for sale in California. If a Settling Defendant decides to continue to ship some,
22 but not all, Covered Products for sale in California with warnings pursuant to this section, such
23 products (“Non-Averaged Products”) shall not be included in its calculation of weighted average for
24 acrylamide levels set forth in section 2.3(c) below.

25 2.2. “Shipped for sale in California” means direct shipment by a Settling Defendant into
26 California for sale in California, or sale by a Settling Defendant to a third party that a Settling

27 ¹ Except where a higher level is set through application of section 5.2(a) below.
28

1 Defendant knows will sell the Covered Product in California. Where a retailer or distributor sells
2 products both in California and other states, Settling Defendant shall take all commercially
3 reasonable steps to ensure that after the Target Levels have been reached, only Covered Products that
4 meet those levels are sold in California.

5 2.3. Standard and Verification.

6 (a) Test Method. For purposes of this Consent Judgment, testing for acrylamide by either
7 party shall be performed using either GC/MS (Gas Chromatograph/Mass Spectrometry), LC-MS/MS
8 (Liquid Chromatograph-Mass Spectrometry) or any other testing method agreed upon by the Parties.

9 (b) Sampling Protocol. Test results demonstrating compliance with the applicable Target
10 Level shall be conducted in accordance with a sampling protocol that establishes that the sales-
11 weighted arithmetic mean of acrylamide levels in all Covered Products is at or below the applicable
12 Target Level, with a 95% confidence level, i.e. $p < .05$. The sampling protocol shall require a
13 minimum of the following: the testing party shall take a minimum of 30 samples from each product
14 line among the Covered Products in the twelve months prior to the Compliance Date. Five samples
15 for each product line shall be taken in each of at least six of the twelve months of the year prior to the
16 Compliance Date. The samples for the year prior to the Compliance Date shall then be aggregated
17 according to the formula in paragraph 2.3(c) to determine compliance with the Target Level. All test
18 results, not including sales data used to calculate weighted averages, shall be public and not subject to
19 any claims of trade secret or any other basis for withholding the data from any person.

20 (c) Calculation of Average. For purposes of this Consent Judgment, the sales-weighted
21 arithmetic mean is to be calculated by the following formula: Multiply the arithmetic mean of the
22 acrylamide concentration of each product line of Covered Products other than Non-Averaged
23 Products in each sampled month (established by the sampling methodology set forth in paragraph
24 2.3(a) and (b)) by that product line's fraction of total sales volume for all product lines to be included
25 in the weighted arithmetic mean, and thereafter sum all such weighted means across all product lines
26 that are required to be included in the weighted arithmetic mean and across all sampled months.
27 Sales volume for each product and for total sales volume shall be based upon the most current 52
28 week Nielson data for metropolitan areas Los Angeles, San Francisco, San Diego and Sacramento

1 available to Settling Defendant one month prior to the Target Date or other testing date established in
2 this Section 2.3. No Non-Averaged Products (as described in Section 2.1(b)) are to be included in the
3 weighted average calculated under this Section 2.3(c).

4 (d) Post-Compliance Testing. If a Settling Defendant's test results demonstrate that the
5 applicable Target Level has been achieved for any Covered Product, that Settling Defendant shall be
6 required to test that Covered Product annually: between three and four years of the date on which the
7 applicable Target Level is achieved, and between four and five years of the date on which the
8 applicable Target Level is achieved. If those tests confirm that the applicable Target Level has been
9 achieved for the Covered Product, the Settling Defendant shall have no further duty to test that
10 Covered Product, although Plaintiff may, after meeting and conferring with the Settling Defendant,
11 apply to the Court for enforcement of the judgment based on results of its own testing showing that
12 the applicable Target Level has not been achieved. Any test data used by Plaintiff for this purpose
13 must be performed and analyzed by methods set forth in sections 2.3(a) and 2.3(c) above. Upon
14 request, each Settling Defendant shall provide to Plaintiff, on a confidential basis, sales data used by
15 that Settling Defendant to calculate the sales-weighted arithmetic mean pursuant to section 2.3(c).

16 (e) Newly Compliant Products. If a Settling Defendant has not achieved the applicable
17 Target Level for any Covered Product by the Target Date, it shall provide warnings for such Covered
18 Product as provided herein in Section 3. A Settling Defendant that has not achieved the applicable
19 Target Level for any Covered Product may also continue periodic testing of such Covered Product
20 until tests demonstrate that the applicable Target Level has been achieved for such Covered Product,
21 at which time the Settling Defendant shall have no further duty to warn, although Plaintiff may apply
22 to the Court for enforcement of the judgment based on results of his own testing showing that the
23 applicable Target Level has not been achieved. Any test data used by Plaintiff for this purpose must
24 be performed and analyzed by methods set forth in sections 2.3(a) and 2.3(c) above. Upon request,
25 each Settling Defendant shall provide to Plaintiff, on a confidential basis, sales data used by that
26 Settling Defendant to calculate the weighted arithmetic mean pursuant to section 2.3(c).

27 (f) Technology Licensing. The requirements in this Consent Judgment are not contingent
28 upon the use of any particular method to meet the Target Level, but Settling Defendant shall license

1 any patented technology used to meet the Target Level, whether existing or in the future, to others for
2 use in other food products, at a commercially reasonable price and using other commercially
3 reasonable terms.

4 **3. INJUNCTIVE RELIEF: CLEAR AND REASONABLE WARNINGS**

5 3.1 Except as set forth in paragraph 2.1(b) above, any Settling Defendant that does not
6 achieve the applicable Target Levels by the Target Date shall within 30 days of the Target Date
7 (“Warning Date”), and until it achieves the applicable Target Level, or who elects to give warnings
8 pursuant to paragraph 2.1(b), shall warn by placing a warning label on the package of (i) each
9 Covered Product for which the applicable Target Level under Section 2.1(a) has not been achieved
10 that is shipped for sale in California; and (ii) each Covered Product which Section 2.1(a) would
11 require the Settling Defendant to exclude from the calculation of the applicable Target Level; and (iii)
12 each Covered Product for which a warning is required pursuant to paragraph 2.1(b), that, at the
13 Settling Defendant’s option, either:

14 (a) conform to the requirements for the “safe harbor” warning methods set out in
15 California Code of Regulations, title 27, section 25601(b), while also stating that acrylamide is the
16 chemical in question and/or the approximate level of acrylamide in the product; or

17 (b) state as follows:

18 WARNING: This product contains acrylamide, a chemical known to
19 the State of California to cause cancer. Acrylamide is not added to the
20 products, but is created by browning potatoes. The FDA does not
21 recommend that people stop eating potatoes. For more information, see
22 the FDA’s website at www.fda.gov.

23 (c) Modification of Warning Language. If, after the Warning Date, defendants from
24 the AG Action or any other defendant in this action, are providing warnings using language set forth
25 in a Consent Judgment entered in this action or the AG Action, any Settling Defendant may use the
26 same warning language as that provided by the other defendants.

27 (d) Effect of Prior Signage. To the extent that, as of the Warning Date, warnings
28 are being provided by Frito-Lay, Inc. or any two other potato chip manufacturers named as
defendants in the AG Action via signs posted in retail stores or other method that complies with the
requirements of a Consent Judgment entered by the Court in the AG Action, Settling Defendant may

1 rely on such signage to satisfy its warning obligations under this Consent Judgment so long as such
2 signs do not name one or more brands that do not also include Settling Defendant's Covered Products
3 that require a warning.

4 3.2 Nothing in this Consent Judgment requires that warnings be given for Covered
5 Products that are not shipped for sale in California.

6 3.3 If a Settling Defendant has demonstrated by testing pursuant to Section 2 hereof that it
7 has achieved the applicable Target Levels for any of the Covered Products that had previously
8 required a warning under Paragraph 3, that Settling Defendant may cease providing such warning.

9 4. SETTLEMENT PAYMENTS

10 4.1 Settling Defendants shall pay to Plaintiff the collective sum of \$500,000 as settlement
11 proceeds ("Settlement Proceeds"). Settlement Proceeds shall be made payable to Plaintiff and
12 delivered to one of Plaintiff's counsel, Rose, Klein & Marias LLP, 801 S. Grand Avenue, 11th Floor,
13 Los Angeles, California 90017-4645, or by wire transfer pursuant to Plaintiff's instruction, within
14 ten (10) business days after the Effective Date, and shall be applied as follows:

15 (a) Civil Penalty. Settling Defendants shall collectively pay civil penalties
16 pursuant to Health & Safety Code section 25249.12 in the amount \$100,000. Plaintiffs have
17 allocated this amount as follows: \$80,000 to resolve the Settling Defendants' liability for any civil
18 penalties, and \$20,000 to resolve any retailers' liability for any civil penalties for sale of any of
19 Settling Defendants' Covered Products. The total amount shall be allocated between Plaintiff and the
20 State of California as directed by Health & Safety Code section 25249.12(c)-(d).

21 (b) Attorneys' Fees and Costs: \$ 400,000 shall be paid to reimburse ELF for
22 attorneys' fees and costs incurred by ELF in investigating this matter and negotiating this Consent
23 Judgment on behalf of itself and the general public.

24 5. MODIFICATION OF CONSENT JUDGMENT

25 5.1. This Consent Judgment may be modified by written agreement of Plaintiff and one or
26 more Settling Defendants, after noticed motion, and upon entry of a modified consent judgment by
27 the Court thereon, or upon motion of the Plaintiff or any Settling Defendant as provided by law and
28 upon entry of a modified consent judgment by the Court. Before filing an application with the Court

1 for a modification to this Consent Judgment, the affected Settling Defendant(s) shall meet and confer
2 with Plaintiff to determine whether the Plaintiff will consent to the proposed modification, and shall
3 submit any proposed modification to the California Attorney General for comment. If a proposed
4 modification is agreed upon between the Settling Defendant and Plaintiff, then Settling Defendant(s)
5 and the Plaintiff will jointly present the modification to the Court by means of a stipulated
6 modification to the Consent Judgment.

7 5.2. Other Settlements.

8 (a) If Plaintiff agrees or has agreed in a settlement or judicially entered consent
9 judgment with another defendant to this action or if the Attorney General has entered into a
10 settlement or judicially entered consent judgment with any sliced potato chip or restructured potato
11 crisp manufacturer in the AG Action on terms, as drafted or as implemented, that (i) are materially
12 more beneficial than those set forth in this Consent Judgment as to the time of compliance, or (ii)
13 allow a sliced potato chip product with an acrylamide concentration higher than 281.6 ppb or a
14 restructured chip with a concentration higher than 490 ppb to be shipped for sale and/or sold in
15 California without a warning; then the Parties shall stipulate that this Consent Judgment will be
16 modified to correspond to such terms as provided in such other settlement or judicially entered
17 consent judgment.

18 (b) If Plaintiff in this action, or the Attorney General in the AG Action agrees or
19 has agreed in a settlement or judicially entered consent judgment that some or all Products (as sold by
20 other companies) do not require a warning under Proposition 65 (based on the presence of
21 acrylamide), or if a court of competent jurisdiction renders a final judgment and the judgment
22 becomes final, that some or all Products (as sold by other companies) do not require a warning for
23 acrylamide under Proposition 65 for products that have acrylamide levels in excess of those defined
24 herein, then any Settling Defendant may seek a modification of this Consent Judgment to eliminate
25 its duties to warn and/or other duties related to the reduction of acrylamide levels, up to the levels of
26 acrylamide determined adjudged not to require a warning.

27 5.3. If an agency of the federal government, including, but not limited to the U.S. Food and
28 Drug Administration, states through regulation or other legally binding act, that federal law

1 precludes any Settling Defendant from providing any of the warnings set forth in this Consent
2 Judgment or the methodology for providing such warnings, such Settling Defendant may seek to
3 modify this Consent Judgment to bring the warnings under this Consent Judgment into compliance
4 with federal law, but the modification shall not be granted unless this Court concludes, in a final
5 judgment or order, that federal law precludes Settling Defendant from providing warnings as set forth
6 in this Consent Judgment. A determination that the provision of some, but not all, forms or
7 methodologies of warning described in Section 3 above is not permitted shall not relieve Settling
8 Defendants of the duty to provide one of the other forms or methodologies of warnings described
9 under this judgment for which such determination has not been made.

10 5.4. If Proposition 65 or its implementing regulations are changed from their terms as they
11 exist on the date of entry of judgment, Parties may jointly or separately seek modification of the
12 Consent Judgment through stipulation or noticed motion, which shall be granted upon demonstration
13 of such changes, as follows:

14 (a) If the change establishes that warnings for acrylamide in sliced potato chip
15 products are not required, any Settling Defendant may seek a modification of this Consent Judgment
16 to eliminate its duties to warn and/or reduce acrylamide levels.

17 (b) If the change establishes that the warnings provided by this Consent Judgment
18 would not comply with Proposition 65 or its implementing regulations, any Party may seek a
19 modification of the Consent Judgment to conform the judgment to the change in law.

20 (c) If the change would provide a new form, manner, or content for an optional or
21 safe-harbor warning, any or all Settling Defendants shall meet and confer with Plaintiff and,
22 following agreement, apply to the Court for approval of a plan for implementing warnings in such
23 manner. Such application shall not be approved unless the Courts finds that the new warning and/or
24 method will comply with the law and will not be materially less informative or likely to be seen, read
25 and understood than the warning provisions under this Consent Judgment.

26 (d) If any Settling Defendant, or any of their counsel acting on their behalf
27 corresponds in writing to any branch of the United States Government or the State of California in
28 connection with the application of Proposition 65 to acrylamide in fried or baked potato products,

1 then, so long as such correspondence is not confidential and would be available to the Plaintiff under
2 the Federal Freedom of Information Act or Public Records Act, respectively, the Settling Defendant
3 or counsel originating such communication shall provide the Plaintiff with a copy of such
4 communication as soon as practicable, but not more than 10 days after sending or receiving the
5 correspondence; provided, however, that this Paragraph shall not apply to correspondence to or from
6 trade associations or other groups of which the Settling Defendant is a member, nor shall this
7 Paragraph apply to the extent the Settling Defendant is no longer required to test for acrylamide
8 under this Consent Judgment.

9 **6. ENFORCEMENT**

10 6.1. Plaintiff may, after meeting and conferring with a Settling Defendant, by motion or
11 application for an order to show cause before this Court, enforce the terms and conditions contained
12 in this Consent Judgment against that Settling Defendant. In any such proceeding, Plaintiff may seek
13 whatever fines, costs, penalties, or remedies are provided by law for failure to comply with the
14 Consent Judgment and where said violations of this Consent Judgment constitute subsequent
15 violations of Proposition 65 or other laws independent of the Consent Judgment and/or those alleged
16 in the Complaint, Plaintiff is not limited to enforcement of the Consent Judgment, but may seek in
17 another action whatever fines, costs, penalties, or remedies are provided for by law for failure to
18 comply with Proposition 65 or other laws. In any action brought by Plaintiff alleging subsequent
19 violations of Proposition 65 or other laws, the affected Settling Defendant may assert any and all
20 defenses that are available.

21 **7. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

22 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
23 party he or she represents to stipulate to this Consent Judgment and to enter into and execute the
24 Consent Judgment on behalf of the party represented and legally to bind that party.

25 **8. CLAIMS COVERED**

26 This Consent Judgment is a full, final, and binding resolution between the Plaintiff and
27 Settling Defendants, of any violation of Proposition 65 or its implementing regulations or any other
28 statutory or common law claims that have been or could have been asserted in the Complaint against

1 Settling Defendants for failure to provide clear and reasonable warnings of exposure to acrylamide
2 from the consumption of the Covered Products, or any other claim based on the facts or conduct
3 alleged in the Complaint as to such Products. Compliance with the terms of this Consent Judgment
4 resolves any issue now, in the past, and in the future concerning compliance by Settling Defendants,
5 their parents, shareholders, divisions, subdivisions, subsidiaries, sister companies, affiliates,
6 cooperative members, licensees, agents and representatives and their distributors, brokers,
7 wholesalers, and retailers who sell Covered Products; and the officers, directors, employees,
8 attorneys, agents, representatives, predecessors, successors, and assigns of any of them, with the
9 requirements of Proposition 65 and its implementing regulations.

10 **10. RETENTION OF JURISDICTION**

11 10.1. This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

12 **11. PROVISION OF NOTICE**

13 11.1. When any party is entitled to receive any notice under this Consent Judgment, the
14 notice shall be sent by overnight courier service to the person and address set forth in this Paragraph.
15 Any party may modify the person and address to whom the notice is to be sent by sending each other
16 party notice by certified mail, return receipt requested. Said change shall take effect for any notice
17 mailed at least five days after the date the return receipt is signed by the party receiving the change.

18 11.2. Notices shall be sent by First Class Mail and/or overnight delivery to the following
19 when required:

20 For Plaintiff:

21 James R. Wheaton, Esq.
22 Lynne R. Saxton, Esq.
23 Environmental Law Foundation
1736 Franklin Street, 9th Floor
Oakland, CA 94612

24 David A. Rosen, Esq.
25 Rose, Klein & Marias LLP
26 801 South Grand Avenue, 11th Floor
27 Los Angeles, CA 90017
28

1 For Settling Defendants:

2 Michèle B. Corash, Esq.
3 Morrison & Foerster LLP
4 425 Market Street
5 San Francisco, CA 94105

6 For Birds Eye Foods, Inc.:

7 Elizabeth Robinson-Bret
8 General Counsel
9 Birds Eye Foods, Inc.
10 90 Lindon Oaks
11 Rochester, NY 14625

12 For Snyder's of Hanover, Mfg., Inc. and
13 Snyder's of Hanover Sales Company:

14 Michael C. Anderson,
15 Corporate Counsel
16 Snyder's of Hanover, Inc.
17 1250 York Street
18 Hanover, PA 17331

19 For Poore Brothers, Inc.:

20 Steven Weinberger
21 Senior Vice President, Chief Financial Officer
22 The Inventure Group
23 35 South La Cometa
24 Goodyear, AZ 85338

25 For Zappe Endeavors, LLC:

26 Ronald J. Zappe
27 President
28 Zappe Endeavors LLC
 P.O. Box 1533
 307 E. Airline Highway
 Gramercy, LA 70052

29 **12. COURT APPROVAL**

30 12.1 Plaintiff agrees to comply with the reporting requirements referenced in California
31 Health and Safety Code section 25249.7(f). Pursuant to the regulations promulgated under that
32 section, Plaintiff shall present this Consent Judgment to the California Attorney General's Office
33 within two (2) days after receipt of all necessary signatures.

1 12.2 The Parties acknowledge that, pursuant to Health and Safety Code section 25249.7, a
2 noticed motion must be filed to obtain judicial approval of the Consent Judgment. Accordingly,
3 Plaintiff shall file a motion for approval of the settlement within a reasonable period of time after the
4 date this agreement is signed by all parties. Plaintiff also agrees to serve a copy of the noticed motion
5 to approve and enter the Consent Judgment on the California Attorney General's Office, consistent
6 with the requirements set forth in California Code of Regulations, title 11, section 3000(a).

7 12.3 If this Consent Judgment is not approved by the Court, it shall be of no force or effect
8 and cannot be used in any proceeding for any purpose.

9 **13. ENTIRE AGREEMENT; MUTUAL DRAFTING**

10 13.1. This Consent Judgment contains the sole and entire agreement and understanding of
11 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
12 negotiations, commitments and understandings related hereto. No representations, oral or otherwise,
13 express or implied, other than those contained herein have been made by any party hereto. No other
14 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind
15 any of the parties.

16 13.2 This Consent Judgment is the result of mutual drafting and no ambiguity found herein
17 shall be construed in favor of or against any party.

18 **14. EXECUTION IN COUNTERPARTS**

19 14.1. The stipulations to this Consent Judgment maybe executed in counterparts and by
20 means of facsimile, which taken together shall be deemed to constitute one document.

21
22 IT IS SO STIPULATED:

23 Dated: 5/7/09

ENVIRONMENTAL LAW FOUNDATION
JAMES WHEATON

24
25 By: _____

James Wheaton
For Plaintiff Environmental Law Foundation

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

By: _____
David A. Rosen, Esq.
Rose, Klein & Marias LLP
801 South Grand Avenue, 11th Floor
Los Angeles, CA 90017
For Plaintiff Environmental Law Foundation

Dated: MICHELE B. CORASH
MORRISON & FOERSTER

By: _____
Michèle B. Corash
For Defendants Birds Eye Foods, Inc.; Poore Brothers,
Inc.; Snyder's Of Hanover Mfg., Inc.; Snyder's of
Hanover Sales Company; and Zappe Endeavors, LLC,
Inc.


Dated:

By: _____
For Defendant Birds Eye Foods, Inc.

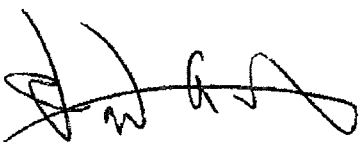
Dated:

By: _____
For Defendant Poore Brothers, Inc.

Dated: 6 MAY 09

By: 
For Defendants Snyder's of Hanover Mfg., Inc., and
Snyder's of Hanover Sales Company

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

By: 
David A. Rosen, Esq.
Rose, Klein & Marias LLP
801 South Grand Avenue, 11th Floor
Los Angeles, CA 90017
For Plaintiff Environmental Law Foundation

Dated: MICHELE B. CORASH
MORRISON & FOERSTER

By: _____
Michèle B. Corash
For Defendants Birds Eye Foods, Inc.; Poore Brothers,
Inc.; Snyder's Of Hanover Mfg., Inc.; Snyder's of
Hanover Sales Company; and Zappe Endeavors, LLC,
Inc.

Dated:

By: _____
For Defendant Birds Eye Foods, Inc.

Dated:

By: _____
For Defendant Poore Brothers, Inc.

Dated:

By: _____
For Defendants Snyder's of Hanover Mfg., Inc., and
Snyder's of Hanover Sales Company

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

By:

David A. Rosen, Esq.
Rose, Klein & Marias LLP
801 South Grand Avenue, 11th Floor
Los Angeles, CA 90017
For Plaintiff Environmental Law Foundation

Dated: 5/8/09

MICHÈLE B. CORASH
MORRISON & FOERSTER

By:

Michèle Corash

Michèle B. Corash
For Defendants Birds Eye Foods, Inc.; Poore Brothers, Inc.; Snyder's Of Hanover Mfg., Inc.; Snyder's of Hanover Sales Company; and Zappe Endeavors, LLC, Inc.

Dated: 5/8/09

By:

Michèle Corash

For Defendant Birds Eye Foods, Inc.

Dated: 5/8/09

By:

Michèle Corash

For Defendant Poore Brothers, Inc.

Dated:

By: _____

For Defendants Snyder's of Hanover Mfg., Inc., and Snyder's of Hanover Sales Company

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

Dated: 5/3/09

By: Michelle Corash

For Defendant Zappe Endeavors, LLC

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated:

Hon. Anthony J. Mohr
Judge of the Superior Court