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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 THE HAIN CELESTIAL GROUP**

Date: 10/29/09
Time: 8:30 a.m.
Dept: 309
Judge: John Shepard Wiley
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 several defendants, and alleged that each defendant failed to provide clear and reasonable warnings that ingestion of potato chip and restructured crisp products at issue in the Complaint (the

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

6 1.2. Since August 26, 2005, the Attorney General for the State of California (“Attorney
7 General”) was also prosecuting a Proposition 65 enforcement action in Department 307 of this Court
8 against defendants Procter & Gamble Manufacturing Company, Procter & Gamble Distributing
9 Company, Frito-Lay, Inc., Lance, Inc., and Kettle Foods, Inc., arising from the presence of
10 acrylamide in those companies’ sliced potato chips and restructured potato crisps, in a case captioned
11 *People of the State of California v. Frito-Lay, Inc., et al.*, (Case No. BC 338956) (the “AG Action”).
12 None of the defendants in the AG Action are named in the ELF Action.

13 On February 1, 2008, the Court entered a consent judgment resolving the AG’s claims against
14 the two Procter & Gamble entities. (“P&G Settlements”). These consent judgments include
15 injunctive relief, including numerical acrylamide concentration targets and compliance dates for
16 reduction of acrylamide levels in restructured potato chips at issue in that action, and warning
17 requirements for Products that do not meet that target by the compliance dates.

18 On August 1, 2008, the Court entered three consent judgments in the AG Action, resolving
19 the People’s claims against Frito-Lay, Inc., Lance, Inc., and Kettle Foods, Inc. (“AG Settlements”).
20 These consent judgments include injunctive relief, including numerical acrylamide concentration
21 targets and compliance dates for reduction of acrylamide levels in sliced and restructured potato chips
22 at issue in that action, and warning requirements for Products that do not meet those targets by the
23 compliance dates.

24 1.3 Included in the P&G Settlements and the AG Settlements are provisions describing the
25 requirements for signage (“AG Signage”) that may be used to provide Proposition 65 warnings for
26 noncompliant products in retail establishments in lieu of other warnings (i.e., on the product labels).
27 The language of AG Signage would not necessarily identify which brands, flavors or variants of
28 potato chip or crisp products are being warned about. While Plaintiff would not ordinarily view such

1 signage as satisfying the warning requirements of Proposition 65, Plaintiff acknowledges that: 1) by
2 order of the court in the AG Action, such signage satisfies the Proposition 65 warning requirements
3 for the potato chips and crisps at issue in that case; and 2) such signage might also act as a warning
4 for all potato chips and crisps, including those referenced in this settlement. Therefore, for purposes
5 of this case only, Plaintiff accepts and agrees that the AG Signage will satisfy Defendants' obligation
6 to provide a Proposition 65 warning when provided at the time and in the manner described in the
7 AG Settlements, if it meets the requirements of section 3.1(d) of this settlement.

8 1.4 On January 31, 2008, Plaintiff filed another complaint for civil penalties and
9 injunctive relief for violations of Proposition 65 in the Superior Court for the County of Los Angeles
10 naming several retailers ("Retailer Complaint"). The Retailer Complaint alleged that retail
11 defendants ("Retailers") violated Proposition 65 by failing to provide clear and reasonable warnings
12 that ingestion of potato chip products at issue in that Complaint, would expose consumers to
13 acrylamide.

14 1.5 The Hain Celestial Group, Inc. (collectively, "Settling Defendant") is among the
15 Defendants named in Plaintiff's Complaint.

16 1.6 Settling Defendant is a corporation that employs more than 10 persons, and at some
17 time relevant to the allegations of the complaint manufactured Products, and shipped Products for
18 sale in California.

19 1.7. The Products included in this Consent Judgment are those sliced potato chips ("Chip
20 Products") and restructured crisps ("Crisp Products") of Settling Defendant's Products that were
21 referenced in Plaintiff's notice of violation of Proposition 65 sent to, *inter alia*, Settling Defendants
22 and the Attorney General, pursuant to Health and Safety Code section 25249.7 and are, or were
23 during times relevant to the Complaint, shipped for sale in California (collectively, Chip Products and
24 Crisp Products hereinafter "Covered Products").

25 1.8. For purposes of this Consent Judgment only, Plaintiff and Settling Defendant
26 (collectively, the "Parties") stipulate that this Court has jurisdiction over the allegations of violations
27 contained in the Plaintiff's Complaint and personal jurisdiction over Settling Defendant as to the acts
28 alleged in the Plaintiff's Complaint, that venue is proper in the County of Los Angeles, and that this

1 Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which
2 were or could have been raised against Settling Defendant in the Complaint based on the facts alleged
3 therein.

4 1.9. Except as expressly set forth herein, the Plaintiff and Settling Defendant enter into this
5 Consent Judgment as a full and final settlement of all claims relating to Covered Products arising
6 from the failure to warn regarding the presence of acrylamide in such Products. Settling Defendant
7 denies the material factual and legal allegations contained in the Complaint and maintain that all
8 Products they have sold in California and/or shipped for sale in California (as that term is defined in
9 paragraph 2.2 below) have been and are in compliance with all laws. Nothing in this Consent
10 Judgment, including Settling Defendant's execution of the Consent Judgment and agreement to
11 provide the relief and remedies specified herein, shall be construed as an admission by Settling
12 Defendant of any fact, finding, issue of law, or violation of law, nor shall compliance with this
13 Consent Judgment constitute or be construed as an admission by Settling Defendant of any fact,
14 finding, conclusion, issue of law, or violation of law, such being specifically denied by Settling
15 Defendant. This Consent Judgment shall not be admissible in any action or proceeding except for
16 proceedings to enforce or modify this Consent Judgment as set forth herein. However, this Paragraph
17 shall not diminish or otherwise affect Settling Defendant's obligations, responsibilities and duties to
18 comply with this Consent Judgment.

19 1.10 It is the intent of the Parties that the terms of this Consent Judgment be interpreted,
20 implemented and modified in the same manner as the terms of the Settlements of the AG Action.

21 1.11. The effective date of this Consent Judgment shall be the date on which the Consent
22 Judgment is entered as a judgment by the trial Court ("Effective Date").

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

24 2.1. Target Level and Target Date.

25 (a) Settling Defendant shall reduce the level of acrylamide in all Covered Products after
26 December 31, 2011 (the "Target Date") to a weighted arithmetic mean of 281.6 parts per billion
27 ("ppb") for sliced chip Products ("Chip Target Level") and 490 ppb for Crisp Products ("Crisp Target
28 Level") (collectively, Chip Target Level and Crisp Target Level referred to hereafter as the "Target

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

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

23 (c) Grace Period. If any defendant from the AG action obtains an extension of the
24 Compliance Date of up to six months pursuant to the “grace period” provision in a Consent Judgment
25 entered in the AG Action, the Settling Defendant may also apply for such an extension, which shall
26 be granted. Settling Defendant may also apply to the Court to extend the Compliance Date by a

27 ¹ Except where a higher level is set through application of section 5.2(a) below.
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1 period of up to six months if no other extension has been granted or if for any reason Plaintiff denies
2 the extension, and the Court may grant the requested extension upon timely application, for good
3 cause shown based on Settling Defendant's diligence and good faith efforts to reduce acrylamide in
4 Covered Products as well as reported progress at the time the request for extension is considered.

5 2.2. "Shipped for sale in California" means direct shipment by a Settling Defendant into
6 California for sale in California, or sale by a Settling Defendant to a third party that a Settling
7 Defendant knows will sell the Covered Product in California. Where a retailer or distributor sells
8 products both in California and other states, Settling Defendant shall take all commercially
9 reasonable steps to ensure that after the Target Levels have been reached, only Covered Products that
10 meet those levels are sold in California.

11 2.3. Standard and Verification.

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

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

26 (c) Calculation of Average. For purposes of this Consent Judgment, the sales-weighted
27 arithmetic mean is to be calculated by the following formula: Multiply the arithmetic mean of the
28 acrylamide concentration of each product line of Covered Products other than Non-Averaged

1 Products in each sampled month (established by the sampling methodology set forth in paragraph
2 2.3(a) and (b)) by that product line's fraction of total sales volume for all product lines to be included
3 in the weighted arithmetic mean, and thereafter sum all such weighted means across all product lines
4 that are required to be included in the weighted arithmetic mean and across all sampled months.
5 Sales volume for each product and for total sales volume shall be based upon the most current 52
6 week Nielson data for metropolitan areas Los Angeles, San Francisco, San Diego and Sacramento
7 available to Settling Defendant one month prior to the Target Date or other testing date established in
8 this Section 2.3. No Non-Averaged Products (as described in Section 2.1(b)) are to be included in the
9 weighted average calculated under this Section 2.3(c).

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

24 (e) Newly Compliant Products. If Settling Defendant has not achieved the applicable
25 Target Level for any Covered Product by the Target Date, it shall provide warnings for such Covered
26 Product as provided herein in Section 3. If Settling Defendant has not achieved the applicable Target
27 Level for any Covered Product, Defendant may also continue periodic testing of such Covered
28 Product until tests demonstrate that the applicable Target Level has been achieved for such Covered

1 Product, at which time Settling Defendant shall have no further duty to warn, although Plaintiff may
2 apply to the Court for enforcement of the judgment based on results of Plaintiff's own testing
3 showing that the applicable Target Level has not been achieved. Any test data used by Plaintiff for
4 this purpose must be performed and analyzed by methods set forth in sections 2.3(a) and 2.3(c)
5 above. Upon request, Settling Defendant shall provide to Plaintiff, on a confidential basis, sales data
6 used by that Settling Defendant to calculate the weighted arithmetic mean pursuant to section 2.3(c).
7 Upon Settling Defendant's request, Plaintiff shall provide to Settling Defendant all of Plaintiff's
8 testing data and results of Plaintiff's tests.

9 (f) Technology Licensing. The requirements in this Consent Judgment are not contingent
10 upon the use of any particular method to meet the Target Level, but Settling Defendant shall license
11 any patented technology used to meet the Target Level, whether existing or in the future, to others for
12 use in other food products, at a commercially reasonable price and using other commercially
13 reasonable terms.

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

15 3.1 Except as set forth in paragraph 2.1(b) above, if Settling Defendant does not achieve the
16 applicable Target Levels by the Target Date, Settling Defendant, within 30 days of the Target Date
17 ("Warning Date"), and until it achieves the applicable Target Level, or who elects to give warnings
18 pursuant to paragraph 2.1(b), shall warn by placing a warning label on the package of (i) each
19 Covered Product for which the applicable Target Level under Section 2.1(a) has not been achieved
20 that is shipped for sale in California; and (ii) each Covered Product which Section 2.1(a) would
21 require Settling Defendant to exclude from the calculation of the applicable Target Level; and (iii)
22 each Covered Product for which a warning is required pursuant to paragraph 2.1(b), that, at the
23 Settling Defendant's option, either:

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

27 (b) state as follows:
28

1 WARNING: This product contains acrylamide, a chemical known to
2 the State of California to cause cancer. Acrylamide is not added to the
3 products, but is created by browning potatoes. The FDA does not
4 recommend that people stop eating potatoes. For more information, see
5 the FDA's website at www.fda.gov.

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

10 (d) Effect of Prior Signage. To the extent that, as of the Warning Date, warnings
11 are being provided by Frito-Lay, Inc. or any two other potato chip manufacturers named as
12 defendants in the AG Action via signs posted in retail stores, or other method that complies with the
13 requirements of a Consent Judgment entered by the Court in the AG Action, Settling Defendant may
14 rely on such signage to satisfy its warning obligations under this Consent Judgment so long as such
15 signs do not name one or more brands that do not also include Settling Defendant's Covered Products
16 that require a warning.

17 3.2 Nothing in this Consent Judgment requires that warnings be given for Covered
18 Products that are not shipped for sale in California.

19 3.3 If Settling Defendant has demonstrated by testing pursuant to Section 2 hereof that it
20 has achieved the applicable Target Levels for any of the Covered Products that had previously
21 required a warning under Paragraph 3, that Settling Defendant may cease providing such warning.

22 **4. SETTLEMENT PAYMENTS**

23 4.1 Settling Defendant shall pay to Plaintiff the total sum of \$100,000 as settlement
24 proceeds ("Settlement Proceeds"). Settlement Proceeds shall be made payable to Plaintiff and
25 delivered to one of Plaintiff's counsel, Rose, Klein & Marias LLP, 801 S. Grand Avenue, 11th Floor,
26 Los Angeles, California 90017-4645, or by wire transfer pursuant to Plaintiff's instruction, within
27 ten (10) business days after the Effective Date, and shall be applied as follows:

28 (a) Civil Penalty. Settling Defendant shall pay civil penalties pursuant to Health
 & Safety Code section 25249.12 in the amount \$20,000. Plaintiffs have allocated this amount as
 follows: \$10,000 to resolve Settling Defendants' liability for any civil penalties, and \$10,000 to

1 resolve liability for any and all civil penalties by any retailer for sale of any of Settling Defendant's
2 Covered Products. The total amount shall be allocated between Plaintiff and the State of California
3 as directed by Health & Safety Code section 25249.12(c)-(d).

4 (b) Attorneys' Fees and Costs: \$80,000 shall be paid to reimburse ELF for attorneys' fees
5 and costs incurred by ELF in investigating this matter and negotiating this Consent Judgment on
6 behalf of itself and the general public.

7 **5. MODIFICATION OF CONSENT JUDGMENT**

8 5.1. This Consent Judgment may be modified by written agreement of Plaintiff and
9 Settling Defendant, after noticed motion, and upon entry of a modified consent judgment by the
10 Court thereon, or upon motion of the Plaintiff or Settling Defendant as provided by law and upon
11 entry of a modified consent judgment by the Court. Before filing an application with the Court for a
12 modification to this Consent Judgment, Settling Defendant shall meet and confer with Plaintiff to
13 determine whether the Plaintiff will consent to the proposed modification, and shall submit any
14 proposed modification to the California Attorney General for comment. If a proposed modification is
15 agreed upon between Settling Defendant and Plaintiff, then Settling Defendant and the Plaintiff will
16 jointly present the modification to the Court by means of a stipulated modification to the Consent
17 Judgment.

18 5.2. Other Settlements.

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

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

10 5.3. If an agency of the federal government, including, but not limited to the U.S. Food and
11 Drug Administration, states through regulation or other legally binding act, that federal law
12 precludes Settling Defendant from providing any of the warnings set forth in this Consent Judgment
13 or the methodology for providing such warnings, Settling Defendant may seek to modify this Consent
14 Judgment to bring the warnings under this Consent Judgment into compliance with federal law, but
15 the modification shall not be granted unless this Court concludes, in a final judgment or order, that
16 federal law precludes Settling Defendant from providing warnings as set forth in this Consent
17 Judgment. A determination that the provision of some, but not all, forms or methodologies of
18 warning described in Section 3 above is not permitted shall not relieve Settling Defendant of the duty
19 to provide one of the other forms or methodologies of warnings described under this judgment for
20 which such determination has not been made.

21 5.4. If Proposition 65 or its implementing regulations are changed from their terms as they
22 exist on the date of entry of judgment, the Parties may jointly or separately seek modification of the
23 Consent Judgment through stipulation or noticed motion, which shall be granted upon demonstration
24 of such changes, as follows:

25 (a) If the change establishes that warnings for acrylamide in sliced potato chip
26 products are not required, Settling Defendant may seek a modification of this Consent Judgment to
27 eliminate its duties to warn and/or reduce acrylamide levels.
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1 (b) If the change establishes that the warnings provided by this Consent Judgment
2 would not comply with Proposition 65 or its implementing regulations, any Party may seek a
3 modification of the Consent Judgment to conform the judgment to the change in law.

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

10 (d) If the parties, , or any of their counsel acting on their behalf corresponds in
11 writing to any branch of the United States Government or the State of California in connection with
12 the application of Proposition 65 to acrylamide in fried or baked potato products, then, so long as
13 such correspondence is not confidential and would be available to the Parties under the Federal
14 Freedom of Information Act or Public Records Act, respectively, the Parties or counsel originating
15 such communication shall provide the other Party with a copy of such communication as soon as
16 practicable, but not more than 10 days after sending or receiving the correspondence; provided,
17 however, that this Paragraph shall not apply to correspondence to or from trade associations or other
18 groups of which the Settling Defendant is a member, nor shall this Paragraph apply to the extent the
19 Settling Defendant is no longer required to test for acrylamide under this Consent Judgment.

20 **6. ENFORCEMENT**

21 6.1. Plaintiff may, after meeting and conferring with Settling Defendant, by motion or
22 application for an order to show cause before this Court, enforce the terms and conditions contained
23 in this Consent Judgment against Settling Defendant. In any such proceeding, Plaintiff may seek
24 whatever fines, costs, penalties, or remedies are provided by law for failure to comply with the
25 Consent Judgment and where said violations of this Consent Judgment constitute subsequent
26 violations of Proposition 65 or other laws independent of the Consent Judgment and/or those alleged
27 in the Complaint, Plaintiff is not limited to enforcement of the Consent Judgment, but may seek in
28 another action whatever fines, costs, penalties, or remedies are provided for by law for failure to

1 comply with Proposition 65 or other laws. In any action brought by Plaintiff alleging subsequent
2 violations of Proposition 65 or other laws, Settling Defendant may assert any and all defenses that are
3 available.

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

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

8 **8. CLAIMS COVERED**

9 This Consent Judgment is a full, final, and binding resolution between the Plaintiff and
10 Settling Defendant, of any violation of Proposition 65 or its implementing regulations or any other
11 statutory or common law claims that have been or could have been asserted in the Complaint against
12 Settling Defendant for failure to provide clear and reasonable warnings of exposure to acrylamide
13 from the consumption of the Covered Products, or any other claim based on the facts or conduct
14 alleged in the Complaint as to such Products. Compliance with the terms of this Consent Judgment
15 resolves any issue now, in the past, and in the future concerning compliance by Settling Defendant,
16 their parents, shareholders, divisions, subdivisions, subsidiaries, sister companies, affiliates,
17 cooperative members, licensees, agents and representatives; and to their distributors, brokers,
18 wholesalers, and retailers who sell Covered Products; and the officers, directors, employees,
19 attorneys, agents, representatives, predecessors, successors, and assigns of any of them, with the
20 requirements of Proposition 65 and its implementing regulations.

21 **9. RETENTION OF JURISDICTION**

22 9.1. This Court shall retain jurisdiction of this matter to implement and enforce the terms
23 of this Consent Judgment.

24 **10. PROVISION OF NOTICE**

25 10.1. When any party is entitled to receive any notice under this Consent Judgment, the
26 notice shall be sent by overnight courier service to the person and address set forth in this Paragraph.
27 Any party may modify the person and address to whom the notice is to be sent by sending each other
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1 party notice by certified mail, return receipt requested. Said change shall take effect for any notice
2 mailed at least five days after the date the return receipt is signed by the party receiving the change.

3 10.2. Notices shall be sent by First Class Mail and/or overnight delivery to the following
4 when required:

5 For Plaintiff:

6 James R. Wheaton, Esq.
7 Lynne R. Saxton, Esq.
8 Environmental Law Foundation
9 1736 Franklin Street, 9th Floor
10 Oakland, CA 94612

11 David A. Rosen, Esq.
12 Rose, Klein & Marias LLP
13 801 South Grand Avenue, 11th Floor
14 Los Angeles, CA 90017

15 For Settling Defendant:

16 Scott A. Cox, Esq.
17 Law Offices of Scott A. Cox
18 27240 Turnberry Lane, Suite 200
19 Valencia, CA 91355

20 Andrew B. Lane
21 Senior Associate General Counsel
22 The Hain Celestial Group
23 58 South Service Road, Suite 250
24 Melville, NY 11747

25 **11. COURT APPROVAL**

26 11.1 Plaintiff agrees to comply with the reporting requirements referenced in California
27 Health and Safety Code section 25249.7(f). Pursuant to the regulations promulgated under that
28 section, Plaintiff shall present this Consent Judgment to the California Attorney General's Office
within two (2) days after receipt of all necessary signatures.

11.2 The Parties acknowledge that, pursuant to Health and Safety Code section 25249.7, a
noticed motion must be filed to obtain judicial approval of the Consent Judgment. Accordingly,
Plaintiff shall file a motion for approval of the settlement within a reasonable period of time after the
date this agreement is signed by all parties. Plaintiff also agrees to serve a copy of the noticed motion
to approve and enter the Consent Judgment on the California Attorney General's Office, as soon as

1 practicable and, depending on the Court's calendar and setting for hearing if possible, at least forty-
2 five (45) days prior to the date set for hearing of the motion in the Superior Court for the City and
3 County of Los Angeles.

4 11.3 If this Consent Judgment is not approved by the Court, it shall be of no force or effect
5 and cannot be used in any proceeding for any purpose.

6 **12. ENTIRE AGREEMENT; MUTUAL DRAFTING**

7 12.1. This Consent Judgment contains the sole and entire agreement and understanding of
8 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
9 negotiations, commitments and understandings related hereto. No representations, oral or otherwise,
10 express or implied, other than those contained herein have been made by any party hereto. No other
11 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind
12 any of the parties.

13 12.2 This Consent Judgment is the result of mutual drafting and no ambiguity found herein
14 shall be construed in favor of or against any party.

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1 13. EXECUTION IN COUNTERPARTS

2 13.1. The stipulations to this Consent Judgment may be executed in counterparts and by
3 means of facsimile, which taken together shall be deemed to constitute one document.

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5 IT IS SO STIPULATED:

6 Dated: Oct. 13, 2009 ENVIRONMENTAL LAW FOUNDATION
7 By: *J. Wheaton*
8 James Wheaton
9 For Plaintiff Environmental Law Foundation

10 Dated: ROSE, KLEIN & MARIAS LLP
11 By: _____
12 David A. Rosen, Esq.
13 For Plaintiff Environmental Law Foundation

14 Dated: Oct. 14, 2009 LAW OFFICES OF SCOTT A. COX
15 By: _____
16 Scott A. Cox
17 For Defendant The Hain Celestial Group, Inc.

18 Dated: Oct. 14, 2009 THE HAIN CELESTIAL GROUP
19 By: *E. Deutsch*
20 Andrew B. Linn, Senior Associate General Counsel
21 For Defendant The Hain Celestial Group, Inc.
22 Ellen Deutsch, Chief Growth Officer

23
24 IT IS SO ORDERED, ADJUDGED, AND DECREED: *SVP*
25 Dated: _____
26 _____
27 Hon. _____
28 Judge of the Superior Court

1 13. EXECUTION IN COUNTERPARTS

2 13.1. The stipulations to this Consent Judgment maybe executed in counterparts and by
3 means of facsimile, which taken together shall be deemed to constitute one document.
4

5 IT IS SO STIPULATED:

6 Dated: ENVIRONMENTAL LAW FOUNDATION
7
8 By: _____
9 James Wheaton
For Plaintiff Environmental Law Foundation

10 Dated: Oct. 13, 2009 ROSE, KLEIN & MARIAS LLP
11
12 By: _____
13 David A. Rosen, Esq.
For Plaintiff Environmental Law Foundation

14 Dated: LAW OFFICES OF SCOTT A. COX
15
16 By: _____
17 Scott A. Cox
For Defendant The Hain Celestial Group, Inc.

18
19 Dated: THE HAIN CELESTIAL GROUP
20
21 By: _____
22 Andrew B. Lane, Senior Associate General Counsel
For Defendant The Hain Celestial Group, Inc.

23
24 IT IS SO ORDERED, ADJUDGED, AND DECREED:

25 Dated: _____
26
27 Hon. _____
28 Judge of the Superior Court