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

CENTER FOR ENVIRONMENTAL HEALTH,
Plaintiff,
v.
SAVE MART SUPERMARKETS, et al.,
Defendants.

Case No. RG 15-782610

**[PROPOSED] CONSENT
JUDGMENT AS TO THE HAIN
CELESTIAL GROUP, INC.**

1 **1. DEFINITIONS**

2 1.1 The “Complaint” means the operative Complaint in the above-captioned matter.

3 1.2 “Compliance Date” means: (a) for Terra Covered Products: August 1, 2022; and (b)
4 for all other Covered Products: August 1, 2020.

5 1.3 “Covered Products” means fried or baked potato- or sweet potato-based snack foods
6 with potato or sweet potato as one of the top three ingredients by weight and that are: (a)
7 manufactured, distributed, sold, and/or offered for sale by The Hain Celestial Group, Inc. (“Settling
8 Defendant” or “Hain”), and (b) sold or offered for sale in California.

9 1.4 “Potato Chips” means sliced potato chips made from common chipping potatoes.

10 1.5 “Terra Covered Products” means Covered Products that are sold by Settling
11 Defendant under the Terra brand or are Similar to snack food products sold by Settling Defendant
12 under the Terra brand but are sold by Settling Defendant to a private label customer under the brand
13 of the private label customer. The term “Terra Covered Products” does not include those Covered
14 Products that consist of packages containing solely Potato Chips, which shall be within the broader
15 category of “Covered Products.”

16 1.6 “Effective Date” means the date on which notice of entry of this Consent Judgment
17 by the Court is served upon Settling Defendant.

18 1.7 “Similar” means having substantially similar vegetable ingredients and cooking
19 processes.

20 **2. INTRODUCTION**

21 2.1 The Parties to this Consent Judgment are the Center for Environmental Health
22 (“CEH”), a California non-profit corporation, and Settling Defendant. CEH and Settling Defendant
23 (the “Parties”) enter into this Consent Judgment to settle certain claims asserted by CEH against
24 Settling Defendant as set forth in the Complaint.

25 2.2 On May 28, 2015, CEH issued a 60-day Notice of Violation of Proposition 65 to the
26 California Attorney General, to the District Attorneys of every county in California, to the City
27 Attorneys of every California city with a population greater than 750,000, and to Settling
28 Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons to

1 acrylamide contained in Covered Products without first providing a clear and reasonable
2 Proposition 65 warning.

3 2.3 Settling Defendant is a corporation or other business entity that employs ten or more
4 people and manufactures, distributes, sells, or offers for sale Covered Products that are sold in the
5 State of California or has done so in the past.

6 2.4 On August 19, 2015, CEH filed the Complaint, naming Settling Defendant as a
7 defendant in the action. Upon entry of this Consent Judgment, to the extent necessary to effectuate
8 this settlement, the operative Complaint in the action is deemed amended such that the term
9 “Products” means only Covered Products.

10 2.5 Settling Defendant has committed and will continue to commit substantial resources
11 to reduce the acrylamide levels in the Covered Products, including but not limited to employee time
12 researching, developing, and testing acrylamide reduction efforts, capital expenditures on process
13 and equipment changes, and money spent retaining independent contractors to assist in Settling
14 Defendant’s endeavors.

15 2.6 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
16 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
17 over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in the County
18 of Alameda, and that this Court has jurisdiction to enter and enforce this Consent Judgment as a full
19 and final resolution of all claims which were or could have been raised in the Complaint based on
20 the facts alleged therein with respect to Covered Products manufactured, distributed, and/or sold by
21 Settling Defendant. As of the applicable Compliance Date for any Covered Product, the terms of,
22 and standards set by, any prior consent judgment addressing acrylamide exposures under
23 Proposition 65 that include that Covered Product are superseded by the terms and standards of this
24 Consent Judgment as to that Covered Product.

25 2.7 Nothing in this Consent Judgment is or shall be construed as an admission by the
26 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with
27 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
28 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall

1 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
2 other pending or future legal proceedings. This Consent Judgment is the product of negotiation and
3 compromise and is accepted by the Parties solely for purposes of settling, compromising, and
4 resolving issues disputed in this Action.

5 **3. INJUNCTIVE RELIEF**

6 3.1 After the applicable Compliance Date, Settling Defendant shall be permanently
7 enjoined from manufacturing or purchasing any Covered Products that are sold or offered for sale in
8 California which do not meet the acrylamide concentration levels (“Reformulation Levels”) in
9 section 3.1 below, unless they meet the warning requirements of set forth in section 3.7 below:

10 3.1.1 For Potato Chips:

11 3.1.1.1 The average acrylamide concentration shall not exceed 281 parts
12 per billion (“ppb”) by weight (the “Potato Chips Average Level”).

13 3.1.1.2. The acrylamide concentration of any individual unit of Potato
14 Chips shall not exceed 350 ppb by weight, based on a representative composite sample taken from
15 the individual unit being tested (the “Potato Chips Unit Level”).

16 3.1.2 For all other Covered Products:

17 3.1.2.1 The average acrylamide concentration shall not exceed 350 ppb
18 by weight (the “Average Level”).

19 3.1.2.2 The acrylamide concentration of any individual unit of Covered
20 Products shall not exceed 490 ppb by weight, based on a representative composite sample taken
21 from the individual unit being tested (the “Unit Level”).

22 3.2 **Average Level Determination.** The Average Level (either the Average Level or the
23 Potato Chips Average Level, as applicable) is determined by randomly selecting and testing at least
24 one (1) sample each from at least three (3) and up to ten (10) different lots of a particular Covered
25 Product (or the maximum number of lots available for testing if fewer than three) during a testing
26 period of at least 365 days. The mean and standard deviation shall be calculated using the sampling
27 data. Any data points that are more than three standard deviations outside the mean shall be
28

discarded, and the mean and standard deviation recalculated using the remaining data points. The mean determined in accordance with this procedure shall be deemed the “Average Level.”

3.3 Compliance Testing. Compliance with the Reformulation Levels shall be determined by use of a test performed by an accredited laboratory using either GC/MS (Gas Chromatograph/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), or any other testing method agreed upon by the Parties. Any samples of a Covered Product tested under Sections 3.1.1 and 3.1.2 shall be homogenized before testing for acrylamide content.

3.4 Interim Measures. Settling Defendant shall use commercially reasonable and good faith efforts to achieve compliance with the Reformulation Levels for as many Covered Products as possible earlier than the applicable Compliance Date. These efforts shall include, at a minimum, efforts to adjust cooking processes, ingredients, and/or formulas.

3.5 Reporting. Until Settling Defendant achieves compliance with the Reformulation Levels as to all of its Covered Products, Settling Defendant shall provide a written progress report to CEH once every twelve (12) months after the Effective Date. Such reports shall include, at a minimum, an identification and discussion of the interim measures Settling Defendant has implemented or considered to reduce the acrylamide levels in its Covered Products, the results of any bench or production scale testing of acrylamide reduction technologies, and an identification of any Covered Products for which Settling Defendant has achieved substantial reductions in acrylamide levels and/or compliance with the Reformulation Levels. Such reports shall be provided to CEH through its counsel at the address specified in Section 8.1 below.

3.6 Extension of Compliance Date. If, despite using commercially reasonable and good faith efforts, Settling Defendant is unable to satisfy the applicable Reformulation Levels as to some or all of the Terra Covered Products prior to an applicable Compliance Date, Settling Defendant shall provide written notice to CEH at least thirty (30) days before the Compliance Date of its need to extend the Compliance Date by an additional six (6) months. Such written notice shall include: (a) a detailed description of Settling Defendant’s efforts to satisfy the Reformulation Levels and the status of those efforts, (b) a list by name and SKU or other identifier of Terra Covered Products, if any, that will satisfy the Reformulation Levels by the Compliance Date, and (c) a list by

1 name and SKU or other identifier of Terra Covered Products that will not satisfy the Reformulation
2 Levels by the Compliance Date and, for each such Terra Covered Product, the anticipated date of
3 compliance. In addition, if Settling Defendant avails itself of the extension allowed under this
4 Section 3.6, Settling Defendant shall make the additional payments specified in Section 5.2 below
5 for each extension. Settling Defendant may avail itself of this provision no more than three (3)
6 times (such that the Compliance Date may be extended by no more than eighteen (18) months).

7 3.7 Except as provided in Section 6, if Settling Defendant has not reached the
8 Reformulation Levels by the applicable Compliance Date (or any extensions pursuant to Section
9 3.6) for any Covered Products, then for all such Covered Products it shall provide a clear and
10 reasonable warning that complies with Sections 3.7.1, 3.7.2, or 3.7.3. In addition, if Settling
11 Defendant avails itself of the warning option allowed under this Section 3.7, Settling Defendant
12 shall make the additional payments specified in Section 5.3 below.

13 3.7.1 Warnings provided on the packaging of the Covered Product shall state:

14 **WARNING:** Consuming this product can expose you to acrylamide, which
15 is known to the State of California to cause cancer. Acrylamide is a
16 chemical that can form in some foods during high-temperature cooking
17 processes, such as frying, roasting, and baking. For more information go to
18 www.P65Warnings.ca.gov/food.

19 This statement shall be prominently displayed on the Covered Product with such conspicuousness,
20 as compared with other words, statements, or designs as to render it likely to be read and
21 understood by an ordinary individual prior to sale. If the warning statement is displayed on the
22 Covered Product's label, it must be set off from other surrounding information and enclosed in a
23 text box.

24 3.7.2 Warnings provided on a placard or sign, and for internet, catalog, or any
25 other sale, shall state:

26 **WARNING:** Consuming this product can expose you to acrylamide, which
27 is known to the State of California to cause cancer. Acrylamide is a
28 chemical that can form in some foods during high-temperature cooking

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

This statement shall be prominently displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual prior to sale. If the statement is displayed on a placard or sign where the Covered Product is offered for sale, the warning placard or sign must enable an ordinary individual to easily determine which specific Covered Products the warning applies to, and to differentiate between that Covered Product and other products to which the warning statement does not apply. For internet, catalog, or any other sale where the consumer is not physically present, the warning statement shall be displayed in such a manner that it is likely to be read and understood by an ordinary individual prior to the authorization of or actual payment. To comply with this Section 3.7.2, Settling Defendant may rely on the procedure for notifying retailers set out in Title 27, California Code of Regulations, section 25600.2, in effect as of the Effective Date.

3.7.3 The warning requirements set forth herein are imposed pursuant to the terms of this Consent Judgment, and are recognized by the parties as not being the exclusive manner of providing a warning for the Covered Products. Warnings may be provided as specified in the Proposition 65 regulations for food in effect as of the Effective Date (Title 27, California Code of Regulations, section 25601, *et seq.*) or as such regulations may be amended in the future.

4. ENFORCEMENT

4.1 **General Enforcement Provisions.** CEH may, by motion or application for an order to show cause before this Court, enforce the terms and conditions contained in this Consent Judgment. Any action to enforce alleged violations of Section 3.1 by Settling Defendant shall be brought exclusively pursuant to this Section 4, and be subject to the meet and confer requirement of Section 4.2.6, if applicable.

4.2 Enforcement of Reformulation Commitment.

4.2.1 Covered Product Identification. Within thirty (30) days after the applicable Compliance Date, Settling Defendant shall notify CEH of a means sufficient to allow CEH to identify those Covered Products that are subject to that Compliance Date and that are manufactured

1 or purchased by Settling Defendant on or after that date, for example, a unique brand name or
2 characteristic system of product numbering or labeling. Upon written request by CEH, but no more
3 than once in any two calendar years, Settling Defendant shall, within ninety (90) days of receiving a
4 request from CEH, update the information provided to CEH pursuant to this Section 4.2.1 by
5 notifying CEH of a means sufficient to allow CEH to identify Covered Products currently supplied
6 or offered for sale by Settling Defendant to the extent such Covered Products are then subject to a
7 Compliance Date. All information provided to CEH pursuant to this Section 4.2.1 may be
8 designated by Settling Defendant as competitively sensitive confidential business information, and
9 if so designated shall not be disclosed to any person without the written permission of Settling
10 Defendant. Any motions or pleadings or any other court filings that may reveal information
11 designated as competitively sensitive confidential business information pursuant to this Section
12 shall be submitted in accordance with California Rules of Court 8.46 and 2.550, et seq. The
13 provisions of this Section 4.2.1 shall sunset seven (7) years after the applicable Compliance Date for
14 each type of Covered Product or any extension thereof granted pursuant to Section 3.6.

15 4.2.2 Notice of Violation. In the event that CEH purchases a Covered Product in
16 California that was manufactured, distributed, or sold by Settling Defendant and that has a best-by
17 or sell-by (or equivalent) date or other code that reflects that the Covered Product was manufactured
18 or purchased by Settling Defendant after the Compliance Date, and for which CEH has laboratory
19 test results showing that the Covered Product exceeds the applicable Unit Level, and which lacks a
20 warning that complies with Section 3.7, then CEH may issue a Notice of Violation pursuant to this
21 Section 4.2. If the manufacture or purchase date is not apparent from the dates or coding used on
22 the Covered Product label, CEH shall withdraw the Notice of Violation if Settling Defendant
23 demonstrates that the Covered Product at issue was manufactured or purchased before the
24 Compliance Date. Notwithstanding the foregoing, CEH may not issue any Notice of Violation if
25 the packaging of the Covered Product is marked or labeled with the statement “Not for Sale in
26 California” or equivalent language so long as such statement is prominently placed upon such
27 Covered Product’s label or other labeling, as compared with other words or statements on the label
28 or labeling, as to render it likely to be read and understood by an ordinary individual under

1 customer conditions of purchase or use. If Settling Defendant marks or labels a Covered Product
2 with such a statement, Settling Defendant shall include a letter to each of its retailer or distributor
3 customers receiving that Covered Product notifying the customer that the Covered Product may not
4 be sold in California.

5 4.2.3 Service of Notice of Violation and Supporting Documentation.

6 4.2.3.1 The Notice of Violation shall be sent to the person(s) identified in
7 Section 8.2 to receive notices for Settling Defendant, and must be served within ninety (90) days of
8 the later of the date the Covered Product at issue was purchased or otherwise acquired by CEH or
9 the date that CEH can reasonably determine that the Covered Product at issue was manufactured,
10 distributed, or sold by Settling Defendant, provided, however, that CEH may have up to an
11 additional ninety (90) days to send the Notice of Violation if, notwithstanding CEH's good faith
12 efforts, the test data required by Section 4.2.3.2 below cannot be obtained by CEH from its
13 laboratory before expiration of the initial ninety (90)-day period. The meet and confer and other
14 deadlines specified in this Section 4 may be extended in writing by the Parties.

15 4.2.3.2 The Notice of Violation shall, at a minimum, set forth: (a) the date
16 the Covered Product was purchased; (b) a description of the Covered Product giving rise to the
17 alleged violation, including the name and address of the retail entity from which the sample was
18 obtained and if available information that identifies the product lot; and (c) all test data obtained by
19 CEH regarding the Covered Product and supporting documentation sufficient for validation of the
20 test results, including any laboratory reports, quality assurance reports, and quality control reports
21 associated with testing of the Covered Product.

22 4.2.4 Notice of Election of Response. No more than sixty (60) days after
23 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to
24 CEH whether it elects to contest the allegations contained in a Notice of Violation ("Notice of
25 Election"). Failure to provide a Notice of Election within sixty (60) days of effectuation of service
26 of a Notice of Violation shall be deemed an election to contest the Notice of Violation.

27 4.2.5 If a Notice of Violation is contested, the Notice of Election shall include all
28 then-available non-privileged test data regarding the alleged violation, as well as any other

documents upon which Settling Defendant is relying to contest the alleged violation. If Settling Defendant or CEH later acquires additional test or other non-privileged data regarding the alleged violation during the meet and confer period described in Section 4.2.6, it shall notify the other party and promptly provide all such non-privileged data or information to the party unless either the Notice of Violation or Notice of Election has been withdrawn.

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

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

4.2.7.1 Settling Defendant shall include in its Notice of Election a detailed description with supporting documentation of the corrective action(s) that it has undertaken or proposes to undertake to address the alleged violation. Any such correction shall, at a minimum, provide reasonable assurance that all Covered Products having the same lot number or lot code as that of the Covered Products identified in CEH's Notice of Violation will not be thereafter be sold in California or offered for sale to California customers by Settling Defendant without a warning under Section 3.7, and that Settling Defendant has sent instructions to any retailers or customers that

1 offer such Covered Products for sale to cease offering the Covered Products for sale to California
2 consumers and to return all such Covered Products to Settling Defendant. Settling Defendant shall
3 make available to CEH upon reasonable notice (which shall not exceed more than one (1) request
4 per year) for inspection and copying records of non-privileged correspondence regarding the
5 foregoing. If the Notice of Violation is based on a violation of the applicable Unit Level with
6 respect to a single Covered Product, Settling Defendant will be excused from the corrective action
7 obligation if Settling Defendant produces test results or other evidence showing that the Noticed
8 Covered Products comply with the applicable Average Level. However, to avail itself of this
9 provision, Settling Defendant must provide CEH with all non-privileged acrylamide test data in its
10 possession, custody, or control pertaining to the type of Covered Product at issue in the Notice of
11 Violation that was performed within the year prior to Settling Defendant producing test results to
12 CEH under this Section 4.2.7.1. If there is a dispute over whether Settling Defendant is excused
13 from the corrective action, Settling Defendant and CEH shall meet and confer before seeking any
14 remedy in court.

15 4.2.7.2 If the Notice of Violation is the first, second, third, or fourth
16 Notice of Violation received by Settling Defendant under Section 4.2.2 that was not successfully
17 contested or withdrawn, then Settling Defendant shall pay \$15,000 for each Notice of Violation.
18 This shall be the sole and exclusive monetary remedy for such non-contested violations and CEH
19 shall not be entitled to seek additional amounts for attorneys' fees and costs, civil penalties,
20 payments in lieu of civil penalties, or any other monetary relief. If Settling Defendant has received
21 more than four (4) Notices of Violation under Section 4.2.2 that were not successfully contested or
22 withdrawn, then Settling Defendant shall pay \$25,000 for each subsequent Notice of Violation. If
23 Settling Defendant produces with its Notice of Election test data for the specific SKU, or
24 comparative like items, that reasonably demonstrates predicted acrylamide levels below the
25 applicable Unit Level, then any payment under this Section shall be reduced by 100 percent (100%)
26 for the first Notice of Violation, by seventy-five percent (75%) for the second Notice of Violation,
27 and by fifty percent (50%) for any subsequent Notice of Violation. If Settling Defendant is excused
28 from the corrective action obligation pursuant to Section 4.2.7.1, then Settling Defendant shall pay

1 \$2,500 for that Notice of Violation. In no case shall Settling Defendant be obligated to pay more
2 than \$100,000 for uncontested Notices of Violation in any calendar year irrespective of the total
3 number of Notices of Violation issued.

4 4.2.7.3 In no case shall CEH issue more than one (1) Notice of Violation
5 per manufacturing lot of a type of Covered Product. CEH shall be limited to issuing no more than
6 two (2) total Notices of Violation to Settling Defendant in the first year after each applicable
7 Compliance Date.

8 4.2.8 Payments. Any payments under Section 4.2 shall be made by check payable
9 to the “Lexington Law Group” and shall be paid within thirty (30) days of service of an uncontested
10 Notice of Election triggering a payment, and which shall be used as reimbursement for costs for
11 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse attorneys’
12 fees and costs incurred in connection with these activities, and shall be the extent of all monetary
13 remedies available to CEH under this Consent Judgment for a non-contested Notice of Violation.

14 4.3 **Repeat Violations.** If Settling Defendant has received five (5) or more Notices of
15 Violation in any two (2)-year period concerning the same type of Covered Product that were not
16 successfully contested or withdrawn, as to the fifth and subsequent Notices of Violation, CEH shall
17 meet and confer with Settling Defendant for at least thirty (30) days to determine if Settling
18 Defendant and CEH can agree on measures that the Settling Defendant can undertake to prevent
19 future violations. If the parties cannot agree on such measures, CEH may proceed to file a motion
20 to or application to enforce the Consent Judgment, and CEH may seek whatever fines, costs,
21 penalties, attorneys’ fees, or other remedies that are provided by law for failure to comply with the
22 Consent Judgment.

23 **5. PAYMENTS**

24 5.1 **Payments by Settling Defendant.** Settling Defendant shall pay the total sum of
25 \$587,500 as a settlement payment as further set forth in Section 5.1 within ten (10) calendar days of
26 the Effective Date.

27 5.1.1 Allocation of Payments. The total settlement amount for Settling Defendant
28 shall be paid in separate checks in the amounts specified below and delivered as set forth below.

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

(a) \$94,330 as a civil penalty pursuant to Health & Safety Code § 25249.7(b). This civil penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the initial civil penalty payment for \$70,747.50 shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

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

The CEH portion of the initial civil penalty payment for \$23,582.50 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

(b) \$70,745 as an Additional Settlement Payment ("ASP") to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH intends to restrict use of the ASPs received from the Consent Judgment before the Court to the following purposes: the funds will be placed in CEH's Toxics in Food Fund and used

1 to support CEH programs and activities that seek to educate the public about acrylamide and other
2 toxic chemicals in food, to work with the food industry and agriculture interests to reduce exposure
3 to acrylamide and other toxic chemicals in food, and to thereby reduce the public health impacts and
4 risks of exposure to acrylamide and other toxic chemicals in food sold in California. CEH shall
5 obtain and maintain adequate records to document that ASPs are spent on these activities and CEH
6 agrees to provide such documentation to the Attorney General within thirty (30) days of any request
7 from the Attorney General. The payment pursuant to this Section shall be made payable to the
8 Center for Environmental Health and associated with taxpayer identification number 94-3251981.
9 The payment pursuant to this Section shall be made payable to the Center for Environmental
10 Health, associated with taxpayer identification number 94-3251981 and delivered to Lexington Law
11 Group, 503 Divisadero Street, San Francisco, CA 94117.

12 (c) \$422,425 as a reimbursement of CEH's reasonable attorneys' fees and
13 costs. The attorneys' fees and cost reimbursement shall be made payable to the Lexington Law
14 Group and associated with taxpayer identification number 94-3317175.

15 5.2 Additional Contingent Payments for Extending Compliance Dates.

16 5.2.1 If Settling Defendant avails itself of the initial extension option provided for
17 Terra Covered Products by Section 3.6, within thirty (30) days of first electing to extend the
18 Compliance Date, Settling Defendant shall make an additional payment of \$100,000 as a civil
19 penalty. If Settling Defendant avails itself of the second extension option provided for by Section
20 3.6, within thirty (30) days of electing to extend the Compliance Date a second time, Settling
21 Defendant shall make an additional payment of \$200,000 as a civil penalty for this second
22 extension. If Settling Defendant avails itself of the third extension option provided for by Section
23 3.6, within thirty (30) days of electing to extend the Compliance Date a third time, Settling
24 Defendant shall make an additional payment of \$300,000 as a civil penalty for this third extension.
25 Any additional civil penalty payment shall be apportioned in accordance with Health & Safety Code
26 § 25249.12 (25% to CEH and 75% to OEHHA). Any additional payment required under this
27 Section shall be reduced on a pro rata basis by the percentage of Settling Defendant's sales of Terra
28 Covered Products within that category that satisfy the applicable Reformulation Levels by the

1 applicable Compliance Date. At the same time it makes any necessary payment under this Section,
2 Settling Defendant shall provide CEH with sales data on a confidential basis to support any such
3 reduction of the payment. Any such reduction shall be calculated based on Settling Defendant's
4 most recent annual national sales of Terra Covered Products; provided, however, for any Terra
5 Covered Products that Settling Defendant discontinued after the Effective Date in order to comply
6 with the requirements of this Consent Judgment, the final year's worth of Settling Defendant's sales
7 prior to its discontinuation for those Terra Covered Products shall be included within the category
8 of Terra Covered Products that satisfy the applicable Reformulation Levels. If CEH disagrees as to
9 the amount of the reduction, the parties shall meet and confer in good faith. If the parties cannot
10 informally resolve the dispute within thirty (30) days of initiating their meet and confer efforts,
11 CEH may seek to have the dispute resolved by the Court. Any additional civil penalty payments
12 under this section shall be apportioned in accordance with Health & Safety Code § 25249.12 (25%
13 to CEH and 75% to OEHHA). The CEH portion of any such additional civil penalty payment shall
14 be made payable to the Center for Environmental Health and associated with taxpayer identification
15 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
16 Street, San Francisco, CA 94117. The OEHHA portion of the civil penalty shall be made payable
17 to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
18 delivered to the address set forth in Section 5.1.1(a) or any updated address for OEHHA.

19 5.3 Additional Contingent Payments for Warning.

20 5.3.1 If Settling Defendant avails itself of the warning option provided for by
21 Section 3.7, on or before the applicable Compliance Date for each type of Covered Product, Settling
22 Defendant shall make an additional payment of \$250,000 as a civil penalty (such that Settling
23 Defendant would ultimately need to make an additional payment of \$500,000 if it elected to warn as
24 to all Covered Products). Any additional payment required under this section shall be reduced on a
25 pro rata basis by the percentage of Settling Defendant's sales of Covered Products within that
26 category (either Terra Covered Products or all other Covered Products) for which warnings are not
27 required because they meet the applicable Reformulation Levels. At the same time it makes any
28 necessary payment under this Section, Settling Defendant shall provide CEH with sales data on a

1 confidential basis to support any such reduction of the payment. Any such reduction shall be
2 calculated based on Settling Defendant's most recent annual national sales of the Covered Products
3 at issue; provided, however, for any Covered Products that Settling Defendant discontinued after the
4 Effective Date in order to comply with the requirements of this Consent Judgment, the final year's
5 worth of Settling Defendant's sales prior to its discontinuation for those Covered Products shall be
6 included within the category of Covered Products that satisfy the applicable Reformulation Levels.
7 If CEH disagrees as to the amount of the reduction, the parties shall meet and confer in good faith.
8 If the parties cannot informally resolve the dispute within thirty (30) days of initiating their meet
9 and confer efforts, CEH may seek to have the dispute resolved by the Court. Any additional civil
10 penalty payments under this section shall be apportioned in accordance with Health & Safety Code
11 § 25249.12 (25% to CEH and 75% to OEHHHA). The CEH portion of any such additional civil
12 penalty payment shall be made payable to the Center for Environmental Health and associated with
13 taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law
14 Group, 503 Divisadero Street, San Francisco, CA 94117. The OEHHHA portion of the civil penalty
15 shall be made payable to OEHHHA and associated with taxpayer identification number 68-0284486.
16 This payment shall be delivered to the address set forth in Section 5.1.1(a) or any updated address
17 for OEHHHA.

18 **6. MODIFICATION AND DISPUTE RESOLUTION**

19 **6.1 Procedure for Modification.** This Consent Judgment may be modified from time to
20 time by (1) express written agreement of the Parties, or (2) as provided in this Section 6. Any
21 modification to the Consent Judgment requires the approval of the Court and prior notice to the
22 Attorney General's Office. As applicable, any Party seeking to modify this Consent Judgment must
23 notify the other Party in writing, and the Parties shall thereafter attempt in good faith to meet and
24 confer with the other Party prior to filing a motion to modify the Consent Judgment. If the Parties
25 are unable to resolve their dispute informally within sixty (60) days after the date of the written
26 notification, the Party that issued the written notification to seek the modification may bring a
27 motion or proceeding to seek judicial relief as to the requested modification.
28

1 **6.2 Feasibility.** If, despite using commercially reasonable and good faith efforts,
2 Settling Defendant has not achieved compliance with the Reformulation Levels as to any Covered
3 Products by the applicable Compliance Date (including any extensions pursuant to Section 3.6),
4 then Settling Defendant may request that the parties meet and confer as to an appropriate
5 modification of this Consent Judgment. Such modification could include: (a) an extension of the
6 Compliance Date (with a negotiated increase in the settlement payments to be made by Settling
7 Defendant); or (b) any other modification that the Parties agree is appropriate and in the public
8 interest. Grounds for an extension or other modification may include, but are not limited to, that,
9 despite Settling Defendant's good faith efforts to reduce acrylamide, it is not Feasible for one or
10 more Covered Products to meet the Reformulation Levels. "Feasible" means capable of being
11 accomplished in a successful manner, taking into account economic, commercial, and technological
12 factors. The term "Feasible" includes, but is not limited to, a consideration of the following factors:
13 availability and reliability of a supply of vegetable ingredients used in the Covered Products; and
14 cost and commercial considerations in changes to sourcing, harvesting, or storage methods for
15 vegetable ingredients used in the Covered Products. In considering whether a technical mitigation
16 option is Feasible, consideration shall be given to, among other things, prior demonstration of the
17 viability of any technologies or methods for Similar products meeting the Reformulation Levels on
18 a commercial application scale.

19 **6.3 Other CEH Settlements.** Settling Defendant may move to modify this Consent
20 Judgment to substitute a higher Reformulation Level that CEH agrees to in a future consent
21 judgment applicable to products Similar to any of the Covered Products, and CEH agrees not to
22 oppose any such motion except for good cause shown. Any such modification shall only apply to
23 Covered Products that are Similar to those products that are subject to a higher Reformulation
24 Level.

25 **6.4 Court Decision Regarding Similar Products.** If a court of competent jurisdiction
26 renders a final judgment that one or more products that are Similar to any of the Covered Products
27 do not require a warning for acrylamide under Proposition 65, where such products contain levels of
28 acrylamide at or above the Reformulation Levels, then Settling Defendant may move to modify this

1 Consent Judgment to conform to such ruling with respect to such portion of the Covered Products
2 as is appropriate.

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

8 **6.6 Change in Proposition 65.** If Proposition 65 or its implementing regulations
9 (including but not limited to the “safe harbor no significant risk level” for acrylamide set forth at
10 Cal. Code Regs., tit. 27, section 25705, subdivision (c)(2) or any “alternative risk level” adopted by
11 regulation or court decision) are changed from their terms as they exist on the date of entry of this
12 Consent Judgment in a manner that impacts the Reformulation Levels, or if OEHHA takes some
13 other final regulatory action for products Similar to the Covered Product in a manner that impacts
14 the Reformulation Levels or that determines that warnings for acrylamide are not required for such
15 products, then Settling Defendant may seek to modify this Consent Judgment to modify the
16 Reformulation Levels. The Parties recognize that the Reformulation Levels are based on a
17 compromise of a number of issues, and that a change to the “safe harbor no significant risk level”
18 for acrylamide would not necessarily entitle a Party to a modification of the terms of this Consent
19 Judgment corresponding in a linear relationship with such a change.

20 **6.7 Scientific Studies.** If an agency of the federal government, including, but not
21 limited to the U.S. Food and Drug Administration, states through any guidance, regulation, or other
22 legally binding act, following a review of scientific studies and following public notice and
23 comment, a cancer potency estimate for acrylamide that equates to a no significant risk level higher
24 than 0.2 micrograms per day, then Settling Defendant shall be entitled to seek a modification of this
25 Consent Judgment to be relieved of its obligations to meet any requirements of this Consent
26 Judgment that are inconsistent with such a change. The Parties recognize that the Reformulation
27 Levels are based on a compromise of a number of issues, and that a change to the “no significant
28

1 risk level” for acrylamide would not necessarily entitle a Party to a modification of the terms of this
2 Consent Judgment corresponding in a linear relationship with such a change.

3 **6.8 Federal Agency Action and Preemption.** If a court of competent jurisdiction or an
4 agency of the federal government, including, but not limited to the U.S. Food and Drug
5 Administration, states through any guidance, regulation, or other legally binding act that federal law
6 has preemptive effect on any of the requirements of this Consent Judgment, then this Consent
7 Judgment may be modified in accordance with the procedure for noticed motions set forth in
8 Section 6.1 to bring it into compliance with or avoid conflict with federal law. Any such
9 modification shall be limited to those changes that are necessary to bring this Consent Judgment
10 into compliance with or avoid conflict with federal law.

11 **6.9 Warnings From Other Settlements.** To the extent Settling Defendant elects to
12 warn pursuant to Section 3.7, Settling Defendant may seek to modify this Consent Judgment to
13 substitute different warning language or methods approved by a court in a future consent judgment
14 or judgment for exposures to acrylamide in snack food products (provided Settling Defendant only
15 seeks to use such language and methods to a comparable manner of sale of the Covered Products)
16 (*e.g.*, internet warnings will only be used for internet sales). If Settling Defendant seeks to exercise
17 this option under Section 6.9, it shall provide notice to CEH, and the Parties shall meet and confer,
18 pursuant to Section 6.1. If the Parties cannot resolve the dispute informally during such meet and
19 confer, Settling Defendant may file a motion to modify the Consent Judgment, and the Court shall
20 approve the requested modification unless it finds that the proposed warning language or method
21 does not comply with Proposition 65.

22 **7. CLAIMS COVERED AND RELEASE**

23 **7.1** Provided that Settling Defendant complies in full with its obligations under Section 5
24 hereof, this Consent Judgment is a full, final, and binding resolution between CEH on behalf of
25 itself and the public interest and Settling Defendant and Settling Defendant’s parents, subsidiaries,
26 affiliated entities that are under common ownership, directors, officers, employees, agents,
27 shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which
28 Settling Defendant directly or indirectly distributes or sells Covered Products, including but not

1 limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees
2 (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn
3 about alleged exposure to acrylamide contained in Covered Products that were manufactured or
4 purchased by Settling Defendant prior to the applicable Compliance Date.

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

12 7.3 Provided that Settling Defendant complies in full with its obligations under Section 5
13 hereof, compliance with the terms of this Consent Judgment by Settling Defendant shall constitute
14 compliance with Proposition 65 and any other prior consent judgment by Settling Defendant, its
15 Defendant Releasees, and its Downstream Defendant Releasees with respect to any alleged failure
16 to warn about acrylamide in Covered Products manufactured or purchased by Settling Defendant
17 after the applicable Compliance Date. As of the Effective Date, the terms and standards of this
18 Consent Judgment shall supersede the terms and standards of any prior consent judgment
19 addressing acrylamide exposures under Proposition 65 as to Settling Defendant, its Defendant
20 Releasees, and its Downstream Release solely with respect to acrylamide in the Covered Products.

21 **8. PROVISION OF NOTICE**

22 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the notice
23 shall be sent by first class and electronic mail to:

24 Howard Hirsch
25 Lexington Law Group
26 503 Divisadero Street
San Francisco, CA 94117
hhirsch@lexlawgroup.com

27 8.2 When Settling Defendant is entitled to receive any notice under this Consent
28 Judgment, the notice shall be sent by first class and electronic mail to:

1 Trenton H. Norris
2 Arnold & Porter Kaye Scholer LLP
3 Three Embarcadero Center, 10th Floor
4 San Francisco, CA 94111
5 trent.norris@arnoldporter.com

6 8.3 Any Party may modify the person and/or address to whom the notice is to be sent by
7 sending the other Party notice by first class and electronic mail.

8 **9. COURT APPROVAL**

9 9.1 This Consent Judgment shall become effective upon the date signed by CEH and
10 Settling Defendant, whichever is later; provided, however, that CEH shall prepare and file a Motion
11 for Approval of this Consent Judgment and Settling Defendant shall use reasonable and good faith
12 efforts, if required, to support entry of this Consent Judgment by the Court.

13 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
14 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose other
15 than to allow the Court to determine if there was a material breach of Section 9.1.

16 9.3 Within ten (10) days of receiving the initial payments required by Section 5.1, CEH
17 shall dismiss all other defendants besides Settling Defendant that are named in this action without
18 prejudice, and those defendants shall waive all costs in this action.

19 **10. GOVERNING LAW AND CONSTRUCTION**

20 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
21 California.

22 **11. ATTORNEYS' FEES**

23 11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
24 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs.

25 11.2 Nothing in this Section 11 shall preclude a Party from seeking an award of sanctions
26 pursuant to law.

27 **12. ENTIRE AGREEMENT**

28 12.1 This Consent Judgment contains the sole and entire agreement and understanding of
the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and

1 therein. There are no warranties, representations, or other agreements between the Parties except as
2 expressly set forth herein. No representations, oral or otherwise, express or implied, other than
3 those specifically referred to in this Consent Judgment have been made by any Party hereto. No
4 other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed
5 to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced
6 herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the
7 extent that they are expressly incorporated herein. No supplementation, modification, waiver, or
8 termination of this Consent Judgment shall be binding unless executed in writing by the Party to be
9 bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or
10 shall constitute a waiver of any of the other provisions hereof whether or not related or equivalent,
11 nor shall such waiver constitute a continuing waiver.

12 **13. RETENTION OF JURISDICTION**

13 13.1 This Court shall retain jurisdiction of this matter to implement, modify, or enforce
14 the Consent Judgment. Notwithstanding the provisions of Section 6, nothing in this Consent
15 Judgment limits or affects the Court's authority to modify this Consent Judgment as provided by
16 law.

17 **14. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

18 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
19 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute
20 the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

22 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
23 against any entity other than Settling Defendant on terms that are different from those contained in
24 this Consent Judgment.

25 **16. COMPLIANCE WITH REPORTING REQUIREMENTS**

26 16.1 CEH agrees to comply with the reporting form requirements referenced in Health
27 and Safety Code section 25249.7(f).
28

17. EXECUTION IN COUNTERPARTS

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

IT IS SO STIPULATED:

Dated: 11 Oct, 2018

CENTER FOR ENVIRONMENTAL HEALTH



Signature

CHARLIE PIZZANO

Printed Name

ASSOCIATE DIRECTOR

Title

Dated: _____, 2018

THE HAIN CELESTIAL GROUP, INC.

Signature

Printed Name

Title

IT IS SO ORDERED, ADJUDGED,
AND DECREED

Dated: _____

Judge of the Superior Court

17. EXECUTION IN COUNTERPARTS

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

IT IS SO STIPULATED:

Dated: _____, 2018

CENTER FOR ENVIRONMENTAL HEALTH

Signature

Printed Name

Title

Dated: October 16, 2018

THE HAIN CELESTIAL GROUP, INC.

Kristy Meringolo
Signature

Kristy Meringolo
Printed Name

SVP, General Counsel / Chief Compliance Officer
Title

IT IS SO ORDERED, ADJUDGED,
AND DECREED

Dated: _____

Judge of the Superior Court