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

1 Upon entry, this Amended Consent Judgment supersedes in its entirety the Consent
2 Judgment entered in this case on December 18, 2018 as to The Hain Celestial Group, Inc. (the
3 “Consent Judgment”). Until this Amended Consent Judgment is entered by the Court, the Consent
4 Judgment shall remain in effect.

5 **1. DEFINITIONS**

6 1.1 The “Complaint” means the operative Complaint in the above-captioned matter.

7 1.2 “Compliance Date” means: (a) for Terra Covered Products: August 1, 2022; and (b)
8 for all other Covered Products: February 1, 2021.

9 1.3 “Covered Products” means fried or baked potato- or sweet potato-based snack foods
10 with potato or sweet potato as one of the top three ingredients by weight and that are: (a)
11 manufactured, distributed, sold, and/or offered for sale by The Hain Celestial Group, Inc. (“Settling
12 Defendant” or “Hain”), and (b) sold or offered for sale in California.

13 1.4 “Potato Chips” means sliced potato chips made from common chipping potatoes.

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

20 1.6 “Effective Date” means the date on which notice of entry of this Amended Consent
21 Judgment by the Court is served upon Settling Defendant.

22 1.7 “Similar” means having substantially similar vegetable ingredients and cooking
23 processes.

24 **2. INTRODUCTION**

25 2.1 The Parties to this Amended Consent Judgment are the Center for Environmental
26 Health (“CEH”), a California non-profit corporation, and Settling Defendant. CEH and Settling
27 Defendant (the “Parties”) enter into this Amended Consent Judgment to settle certain claims
28 asserted by CEH against Settling Defendant as set forth in the Complaint.

1 2.2 On May 28, 2015, CEH issued a 60-day Notice of Violation of Proposition 65 to the
2 California Attorney General, to the District Attorneys of every county in California, to the City
3 Attorneys of every California city with a population greater than 750,000, and to Settling
4 Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons to
5 acrylamide contained in Covered Products without first providing a clear and reasonable
6 Proposition 65 warning.

7 2.3 Settling Defendant is a corporation or other business entity that employs ten or more
8 people and manufactures, distributes, sells, or offers for sale Covered Products that are sold in the
9 State of California or has done so in the past.

10 2.4 On August 19, 2015, CEH filed the Complaint, naming Settling Defendant as a
11 defendant in the action. Upon entry of this Amended Consent Judgment, to the extent necessary to
12 effectuate this settlement, the operative Complaint in the action is deemed amended such that the
13 term “Products” means only Covered Products.

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

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

1 2.7 Nothing in this Amended Consent Judgment is or shall be construed as an admission
2 by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance
3 with the Amended Consent Judgment constitute or be construed as an admission by the Parties of
4 any fact, conclusion of law, issue of law, or violation of law. Nothing in this Amended Consent
5 Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may
6 have in any other pending or future legal proceedings. This Amended Consent Judgment is the
7 product of negotiation and compromise and is accepted by the Parties solely for purposes of
8 settling, compromising, and resolving issues disputed in this Action.

9 2.8 The Parties agree to a six-month extension of the original Compliance Date in the
10 Consent Judgment for non-Terra Covered Products in light of operational and supply chain impacts
11 relating to the coronavirus pandemic. Hain represents that it has been working to meet the
12 acrylamide limits for all Covered Products, including non-Terra Covered Products. This includes
13 trials involving different formulations, production specifications, and ingredient changes. Despite
14 these efforts, coronavirus-related impacts on a key supplier’s operations in Europe as well as Hain’s
15 own production schedules and R&D capacity affect the timing of meeting the original August 1,
16 2020 Compliance Date for non-Terra Covered Products.

17 2.9 In addition, the Parties agree to the option of Hain obtaining a second six-month
18 extension. If Hain exercises that second six-month extension, it will pay a civil penalty modeled on
19 the civil penalty provision for Terra Covered Products (Consent Judgement § 5.2).

20 **3. INJUNCTIVE RELIEF**

21 3.1 After the applicable Compliance Date, Settling Defendant shall be permanently
22 enjoined from manufacturing or purchasing any Covered Products that are sold or offered for sale in
23 California which do not meet the acrylamide concentration levels (“Reformulation Levels”) in
24 section 3.1 below, unless they meet the warning requirements of set forth in section 3.7 below:

25 3.1.1 For Potato Chips:

26 3.1.1.1 The average acrylamide concentration shall not exceed 281 parts
27 per billion (“ppb”) by weight (the “Potato Chips Average Level”).
28

1 3.1.1.2. The acrylamide concentration of any individual unit of Potato
2 Chips shall not exceed 350 ppb by weight, based on a representative composite sample taken from
3 the individual unit being tested (the “Potato Chips Unit Level”).

4 3.1.2 For all other Covered Products:

5 3.1.2.1 The average acrylamide concentration shall not exceed 350 ppb
6 by weight (the “Average Level”).

7 3.1.2.2 The acrylamide concentration of any individual unit of Covered
8 Products shall not exceed 490 ppb by weight, based on a representative composite sample taken
9 from the individual unit being tested (the “Unit Level”).

10 3.2 **Average Level Determination.** The Average Level (either the Average Level or the
11 Potato Chips Average Level, as applicable) is determined by randomly selecting and testing at least
12 one (1) sample each from at least three (3) and up to ten (10) different lots of a particular Covered
13 Product (or the maximum number of lots available for testing if fewer than three) during a testing
14 period of at least 365 days. The mean and standard deviation shall be calculated using the sampling
15 data. Any data points that are more than three standard deviations outside the mean shall be
16 discarded, and the mean and standard deviation recalculated using the remaining data points. The
17 mean determined in accordance with this procedure shall be deemed the “Average Level.”

18 3.3 **Compliance Testing.** Compliance with the Reformulation Levels shall be
19 determined by use of a test performed by an accredited laboratory using either GC/MS (Gas
20 Chromatograph/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), or
21 any other testing method agreed upon by the Parties. Any samples of a Covered Product tested
22 under Sections 3.1.1 and 3.1.2 shall be homogenized before testing for acrylamide content.

23 3.4 **Interim Measures.** Settling Defendant shall use commercially reasonable and good
24 faith efforts to achieve compliance with the Reformulation Levels for as many Covered Products as
25 possible earlier than the applicable Compliance Date. These efforts shall include, at a minimum,
26 efforts to adjust cooking processes, ingredients, and/or formulas.

27 3.5 **Reporting.** Until Settling Defendant achieves compliance with the Reformulation
28 Levels as to all of its Covered Products, Settling Defendant shall provide a written progress report

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

8 **3.6 Extension of Compliance Date.**

9 3.6.1 Terra Covered Products. If, despite using commercially reasonable and good
10 faith efforts, Settling Defendant is unable to satisfy the applicable Reformulation Levels as to
11 some or all of the Terra Covered Products prior to an applicable Compliance Date, Settling
12 Defendant shall provide written notice to CEH at least thirty (30) days before the Compliance
13 Date of its need to extend the Compliance Date by an additional six (6) months. Such written
14 notice shall include: (a) a detailed description of Settling Defendant's efforts to satisfy the
15 Reformulation Levels and the status of those efforts, (b) a list by name and SKU or other
16 identifier of Terra Covered Products, if any, that will satisfy the Reformulation Levels by the
17 Compliance Date, and (c) a list by name and SKU or other identifier of Terra Covered
18 Products that will not satisfy the Reformulation Levels by the Compliance Date and, for each
19 such Terra Covered Product, the anticipated date of compliance. In addition, if Settling
20 Defendant avails itself of the extension allowed under this Section 3.6, Settling Defendant
21 shall make the additional payments specified in Section 5.2 below for each extension. Settling
22 Defendant may avail itself of this provision no more than three (3) times (such that the
23 Compliance Date may be extended by no more than eighteen (18) months).

24 3.6.2 Non-Terra Covered Products. If, despite using commercially reasonable and
25 good faith efforts, Settling Defendant is unable to satisfy the applicable Reformulation Levels
26 as to some or all of the non-Terra Covered Products prior to the applicable Compliance Date,
27 Settling Defendant shall provide written notice to CEH at least thirty (30) days before the
28 Compliance Date of its need to extend the Compliance Date by an additional six (6) months.

1 Such written notice shall include: (a) a detailed description of Settling Defendant's efforts to
2 satisfy the Reformulation Levels and the status of those efforts, (b) a list by name and SKU
3 or other identifier of non-Terra Covered Products, if any, that will satisfy the Reformulation
4 Levels by the Compliance Date, and (c) a list by name and SKU or other identifier of non-
5 Terra Covered Products that will not satisfy the Reformulation Levels by the Compliance Date
6 and, for each such non-Terra Covered Product, the anticipated date of compliance. In
7 addition, if Settling Defendant avails itself of the extension allowed under this Section 3.6,
8 Settling Defendant shall make the additional payments specified in Section 5.2 below for that
9 extension. Settling Defendant may avail itself of this provision only one (1) time (such that
10 the Compliance Date may be extended by no more than six (6) months).

11 3.7 Except as provided in Section 6, if Settling Defendant has not reached the
12 Reformulation Levels by the applicable Compliance Date (or any extensions pursuant to Section
13 3.6) for any Covered Products, then for all such Covered Products it shall provide a clear and
14 reasonable warning that complies with Sections 3.7.1, 3.7.2, or 3.7.3. In addition, if Settling
15 Defendant avails itself of the warning option allowed under this Section 3.7, Settling Defendant
16 shall make the additional payments specified in Section 5.3 below.

17 3.7.1 Warnings provided on the packaging of the Covered Product shall state:
18 **WARNING:** Consuming this product can expose you to acrylamide, which
19 is known to the State of California to cause cancer. Acrylamide is a chemical
20 that can form in some foods during high-temperature cooking processes, such
21 as frying, roasting, and baking. For more information go to
22 www.P65Warnings.ca.gov/food.

23 This statement shall be prominently displayed on the Covered Product with such conspicuousness,
24 as compared with other words, statements, or designs as to render it likely to be read and
25 understood by an ordinary individual prior to sale. If the warning statement is displayed on the
26 Covered Product's label, it must be set off from other surrounding information and enclosed in a
27 text box.
28

1 3.7.2 Warnings provided on a placard or sign, and for internet, catalog, or any
2 other sale, shall state:

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

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

19 3.7.3 The warning requirements set forth herein are imposed pursuant to the terms
20 of this Amended Consent Judgment, and are recognized by the parties as not being the exclusive
21 manner of providing a warning for the Covered Products. Warnings may be provided as specified
22 in the Proposition 65 regulations for food in effect as of the Effective Date (Title 27, California
23 Code of Regulations, section 25601, *et seq.*) or as such regulations may be amended in the future.

24 **4. ENFORCEMENT**

25 4.1 **General Enforcement Provisions.** CEH may, by motion or application for an order
26 to show cause before this Court, enforce the terms and conditions contained in this Amended
27 Consent Judgment. Any action to enforce alleged violations of Section 3.1 by Settling Defendant
28

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

3 **4.2 Enforcement of Reformulation Commitment.**

4 4.2.1 Covered Product Identification. Within thirty (30) days after the applicable
5 Compliance Date, Settling Defendant shall notify CEH of a means sufficient to allow CEH to
6 identify those Covered Products that are subject to that Compliance Date and that are manufactured
7 or purchased by Settling Defendant on or after that date, for example, a unique brand name or
8 characteristic system of product numbering or labeling. Upon written request by CEH, but no more
9 than once in any two calendar years, Settling Defendant shall, within ninety (90) days of receiving a
10 request from CEH, update the information provided to CEH pursuant to this Section 4.2.1 by
11 notifying CEH of a means sufficient to allow CEH to identify Covered Products currently supplied
12 or offered for sale by Settling Defendant to the extent such Covered Products are then subject to a
13 Compliance Date. All information provided to CEH pursuant to this Section 4.2.1 may be
14 designated by Settling Defendant as competitively sensitive confidential business information, and
15 if so designated shall not be disclosed to any person without the written permission of Settling
16 Defendant. Any motions or pleadings or any other court filings that may reveal information
17 designated as competitively sensitive confidential business information pursuant to this Section
18 shall be submitted in accordance with California Rules of Court 8.46 and 2.550, et seq. The
19 provisions of this Section 4.2.1 shall sunset seven (7) years after the applicable Compliance Date for
20 each type of Covered Product or any extension thereof granted pursuant to Section 3.6.

21 4.2.2 Notice of Violation. In the event that CEH purchases a Covered Product in
22 California that was manufactured, distributed, or sold by Settling Defendant and that has a best-by
23 or sell-by (or equivalent) date or other code that reflects that the Covered Product was manufactured
24 or purchased by Settling Defendant after the Compliance Date, and for which CEH has laboratory
25 test results showing that the Covered Product exceeds the applicable Unit Level, and which lacks a
26 warning that complies with Section 3.7, then CEH may issue a Notice of Violation pursuant to this
27 Section 4.2. If the manufacture or purchase date is not apparent from the dates or coding used on
28 the Covered Product label, CEH shall withdraw the Notice of Violation if Settling Defendant

1 demonstrates that the Covered Product at issue was manufactured or purchased before the
2 Compliance Date. Notwithstanding the foregoing, CEH may not issue any Notice of Violation if
3 the packaging of the Covered Product is marked or labeled with the statement “Not for Sale in
4 California” or equivalent language so long as such statement is prominently placed upon such
5 Covered Product’s label or other labeling, as compared with other words or statements on the label
6 or labeling, as to render it likely to be read and understood by an ordinary individual under
7 customer conditions of purchase or use. If Settling Defendant marks or labels a Covered Product
8 with such a statement, Settling Defendant shall include a letter to each of its retailer or distributor
9 customers receiving that Covered Product notifying the customer that the Covered Product may not
10 be sold in California.

11 4.2.3 Service of Notice of Violation and Supporting Documentation.

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

21 4.2.3.2 The Notice of Violation shall, at a minimum, set forth: (a) the date
22 the Covered Product was purchased; (b) a description of the Covered Product giving rise to the
23 alleged violation, including the name and address of the retail entity from which the sample was
24 obtained and if available information that identifies the product lot; and (c) all test data obtained by
25 CEH regarding the Covered Product and supporting documentation sufficient for validation of the
26 test results, including any laboratory reports, quality assurance reports, and quality control reports
27 associated with testing of the Covered Product.
28

1 4.2.4 Notice of Election of Response. No more than sixty (60) days after
2 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to
3 CEH whether it elects to contest the allegations contained in a Notice of Violation (“Notice of
4 Election”). Failure to provide a Notice of Election within sixty (60) days of effectuation of service
5 of a Notice of Violation shall be deemed an election to contest the Notice of Violation.

6 4.2.5 If a Notice of Violation is contested, the Notice of Election shall include all
7 then-available non-privileged test data regarding the alleged violation, as well as any other
8 documents upon which Settling Defendant is relying to contest the alleged violation. If Settling
9 Defendant or CEH later acquires additional test or other non-privileged data regarding the alleged
10 violation during the meet and confer period described in Section 4.2.6, it shall notify the other party
11 and promptly provide all such non-privileged data or information to the party unless either the
12 Notice of Violation or Notice of Election has been withdrawn.

13 4.2.6 Meet and Confer. If a Notice of Violation is contested, CEH and Settling
14 Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of
15 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw the
16 original Notice of Election contesting the violation and serve a new Notice of Election to not
17 contest the violation; provided, however, that, in this circumstance, Settling Defendant shall pay
18 \$2,500 in addition to any other payment required under this Amended Consent Judgment. At any
19 time, CEH may withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the
20 result shall be as if CEH never issued any such Notice of Violation. If no informal resolution of a
21 Notice of Violation results within thirty (30) days of a Notice of Election to contest, CEH may file
22 an enforcement motion or application pursuant to Section 4.1. The parties may extend this thirty
23 (30)-day time period by stipulation. In any enforcement proceeding, CEH may seek whatever fines,
24 costs, penalties, attorneys’ fees, or other remedies are provided by law for failure to comply with the
25 Amended Consent Judgment.

26 4.2.7 Non-Contested Notices. If Settling Defendant elects to not contest the
27 allegations in a Notice of Violation, it shall undertake corrective action(s) and make payments, if
28 any, as set forth below.

1 4.2.7.1 Settling Defendant shall include in its Notice of Election a
2 detailed description with supporting documentation of the corrective action(s) that it has undertaken
3 or proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,
4 provide reasonable assurance that all Covered Products having the same lot number or lot code as
5 that of the Covered Products identified in CEH’s Notice of Violation will not be thereafter be sold
6 in California or offered for sale to California customers by Settling Defendant without a warning
7 under Section 3.7, and that Settling Defendant has sent instructions to any retailers or customers that
8 offer such Covered Products for sale to cease offering the Covered Products for sale to California
9 consumers and to return all such Covered Products to Settling Defendant. Settling Defendant shall
10 make available to CEH upon reasonable notice (which shall not exceed more than one (1) request
11 per year) for inspection and copying records of non-privileged correspondence regarding the
12 foregoing. If the Notice of Violation is based on a violation of the applicable Unit Level with
13 respect to a single Covered Product, Settling Defendant will be excused from the corrective action
14 obligation if Settling Defendant produces test results or other evidence showing that the Noticed
15 Covered Products comply with the applicable Average Level. However, to avail itself of this
16 provision, Settling Defendant must provide CEH with all non-privileged acrylamide test data in its
17 possession, custody, or control pertaining to the type of Covered Product at issue in the Notice of
18 Violation that was performed within the year prior to Settling Defendant producing test results to
19 CEH under this Section 4.2.7.1. If there is a dispute over whether Settling Defendant is excused
20 from the corrective action, Settling Defendant and CEH shall meet and confer before seeking any
21 remedy in court.

22 4.2.7.2 If the Notice of Violation is the first, second, third, or fourth
23 Notice of Violation received by Settling Defendant under Section 4.2.2 that was not successfully
24 contested or withdrawn, then Settling Defendant shall pay \$15,000 for each Notice of Violation.
25 This shall be the sole and exclusive monetary remedy for such non-contested violations and CEH
26 shall not be entitled to seek additional amounts for attorneys’ fees and costs, civil penalties,
27 payments in lieu of civil penalties, or any other monetary relief. If Settling Defendant has received
28 more than four (4) Notices of Violation under Section 4.2.2 that were not successfully contested or

1 withdrawn, then Settling Defendant shall pay \$25,000 for each subsequent Notice of Violation. If
2 Settling Defendant produces with its Notice of Election test data for the specific SKU, or
3 comparative like items, that reasonably demonstrates predicted acrylamide levels below the
4 applicable Unit Level, then any payment under this Section shall be reduced by 100 percent (100%)
5 for the first Notice of Violation, by seventy-five percent (75%) for the second Notice of Violation,
6 and by fifty percent (50%) for any subsequent Notice of Violation. If Settling Defendant is excused
7 from the corrective action obligation pursuant to Section 4.2.7.1, then Settling Defendant shall pay
8 \$2,500 for that Notice of Violation. In no case shall Settling Defendant be obligated to pay more
9 than \$100,000 for uncontested Notices of Violation in any calendar year irrespective of the total
10 number of Notices of Violation issued.

11 4.2.7.3 In no case shall CEH issue more than one (1) Notice of Violation
12 per manufacturing lot of a type of Covered Product. CEH shall be limited to issuing no more than
13 two (2) total Notices of Violation to Settling Defendant in the first year after each applicable
14 Compliance Date.

15 4.2.8 Payments. Any payments under Section 4.2 shall be made by check payable
16 to the “Lexington Law Group” and shall be paid within thirty (30) days of service of an uncontested
17 Notice of Election triggering a payment, and which shall be used as reimbursement for costs for
18 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse attorneys’
19 fees and costs incurred in connection with these activities, and shall be the extent of all monetary
20 remedies available to CEH under this Amended Consent Judgment for a non-contested Notice of
21 Violation.

22 4.3 **Repeat Violations.** If Settling Defendant has received five (5) or more Notices of
23 Violation in any two (2)-year period concerning the same type of Covered Product that were not
24 successfully contested or withdrawn, as to the fifth and subsequent Notices of Violation, CEH shall
25 meet and confer with Settling Defendant for at least thirty (30) days to determine if Settling
26 Defendant and CEH can agree on measures that the Settling Defendant can undertake to prevent
27 future violations. If the parties cannot agree on such measures, CEH may proceed to file a motion
28 to or application to enforce the Amended Consent Judgment, and CEH may seek whatever fines,

1 costs, penalties, attorneys' fees, or other remedies that are provided by law for failure to comply
2 with the Amended Consent Judgment.

3 **5. PAYMENTS**

4 **5.1 Payments by Settling Defendant.** In addition to the monetary amounts previously
5 paid pursuant to the original Consent Judgment, Settling Defendant shall pay the total sum of
6 \$10,000 within ten (10) calendar days of the Effective Date as a reimbursement of CEH's
7 reasonable attorneys' fees and costs associated with the modification of the Consent Judgment. The
8 attorneys' fees and cost reimbursement shall be made payable to the Lexington Law Group and
9 associated with taxpayer identification number 94-3317175.

10 **5.2 Additional Contingent Payments for Extending Compliance Dates.**

11 **5.2.1** If Settling Defendant avails itself of the initial extension option provided for
12 Terra Covered Products by Section 3.6, within thirty (30) days of first electing to extend the
13 Compliance Date, Settling Defendant shall make an additional payment of \$100,000 as a civil
14 penalty. If Settling Defendant avails itself of the second extension option provided for by Section
15 3.6, within thirty (30) days of electing to extend the Compliance Date a second time, Settling
16 Defendant shall make an additional payment of \$200,000 as a civil penalty for this second
17 extension. If Settling Defendant avails itself of the third extension option provided for by Section
18 3.6, within thirty (30) days of electing to extend the Compliance Date a third time, Settling
19 Defendant shall make an additional payment of \$300,000 as a civil penalty for this third extension.
20 Any additional payment required under this Section shall be reduced on a pro rata basis by the
21 percentage of Settling Defendant's sales of Terra Covered Products within that category that satisfy
22 the applicable Reformulation Levels by the applicable Compliance Date. At the same time it makes
23 any necessary payment under this Section, Settling Defendant shall provide CEH with sales data on
24 a confidential basis to support any such reduction of the payment. Any such reduction shall be
25 calculated based on Settling Defendant's most recent annual national sales of Terra Covered
26 Products; provided, however, for any Terra Covered Products that Settling Defendant discontinued
27 after the Effective Date in order to comply with the requirements of this Amended Consent
28 Judgment, the final year's worth of Settling Defendant's sales prior to its discontinuation for those

1 Terra Covered Products shall be included within the category of Terra Covered Products that satisfy
2 the applicable Reformulation Levels. If CEH disagrees as to the amount of the reduction, the
3 parties shall meet and confer in good faith. If the parties cannot informally resolve the dispute
4 within thirty (30) days of initiating their meet and confer efforts, CEH may seek to have the dispute
5 resolved by the Court. Any additional civil penalty payments under this section shall be
6 apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to
7 OEHHA). The CEH portion of any such additional civil penalty payment shall be made payable to
8 the Center for Environmental Health and associated with taxpayer identification number 94-
9 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
10 Francisco, CA 94117. The OEHHA portion of the civil penalty shall be made payable to OEHHA
11 and associated with taxpayer identification number 68-0284486. This payment shall be delivered to
12 the following address or any updated address for OEHHA:

13 For United States Postal Service Delivery:

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

19 For Non-United States Postal Service Delivery:

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

25 5.2.2 If Settling Defendant avails itself of the extension option provided for non-
26 Terra Covered Products by Section 3.6, within thirty (30) days of electing to extend the Compliance
27 Date, Settling Defendant shall make an additional payment of \$150,000 as a civil penalty. Any
28 additional payment required under this Section shall be reduced on a pro rata basis by the
percentage of Settling Defendant's sales of non-Terra Covered Products that satisfy the applicable
Reformulation Levels by the applicable Compliance Date. At the same time it makes any necessary
payment under this Section, Settling Defendant shall provide CEH with sales data on a confidential

1 basis to support any such reduction of the payment. Any such reduction shall be calculated based
2 on Settling Defendant's most recent annual national sales of non-Terra Covered Products; provided,
3 however, for any non-Terra Covered Products that Settling Defendant discontinued after the
4 Effective Date in order to comply with the requirements of this Amended Consent Judgment, the
5 final year's worth of Settling Defendant's sales prior to its discontinuation for those non-Terra
6 Covered Products shall be included within the category of non-Terra Covered Products that satisfy
7 the applicable Reformulation Levels. If CEH disagrees as to the amount of the reduction, the
8 parties shall meet and confer in good faith. If the parties cannot informally resolve the dispute
9 within thirty (30) days of initiating their meet and confer efforts, CEH may seek to have the dispute
10 resolved by the Court. Any additional civil penalty payments under this section shall be
11 apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to
12 OEHHA). The CEH portion of any such additional civil penalty payment shall be made payable to
13 the Center for Environmental Health and associated with taxpayer identification number 94-
14 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
15 Francisco, CA 94117. The OEHHA portion of the civil penalty shall be made payable to OEHHA
16 and associated with taxpayer identification number 68-0284486. This payment shall be delivered to
17 the address set forth in Section 5.2.1 or any updated address for OEHHA.

18 **5.3 Additional Contingent Payments for Warning.**

19 5.3.1 If Settling Defendant avails itself of the warning option provided for by
20 Section 3.7, on or before the applicable Compliance Date for each type of Covered Product, Settling
21 Defendant shall make an additional payment of \$250,000 as a civil penalty (such that Settling
22 Defendant would ultimately need to make an additional payment of \$500,000 if it elected to warn as
23 to all Covered Products). Any additional payment required under this section shall be reduced on a
24 pro rata basis by the percentage of Settling Defendant's sales of Covered Products within that
25 category (either Terra Covered Products or all other Covered Products) for which warnings are not
26 required because they meet the applicable Reformulation Levels. At the same time it makes any
27 necessary payment under this Section, Settling Defendant shall provide CEH with sales data on a
28

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 Amended Consent Judgment, the
5 final year's worth of Settling Defendant's sales prior to its discontinuation for those Covered
6 Products shall be included within the category of Covered Products that satisfy the applicable
7 Reformulation Levels. If CEH disagrees as to the amount of the reduction, the parties shall meet
8 and confer in good faith. If the parties cannot informally resolve the dispute within thirty (30) days
9 of initiating their meet and confer efforts, CEH may seek to have the dispute resolved by the Court.
10 Any additional civil penalty payments under this section shall be apportioned in accordance with
11 Health & Safety Code § 25249.12 (25% to CEH and 75% to OEHHA). The CEH portion of any
12 such additional civil penalty payment shall be made payable to the Center for Environmental Health
13 and associated with taxpayer identification number 94-3251981. This payment shall be delivered to
14 Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117. The OEHHA portion of
15 the civil penalty shall be made payable to OEHHA and associated with taxpayer identification
16 number 68-0284486. This payment shall be delivered to the address set forth in Section 5.2.1 or
17 any updated address for OEHHA.

18 **6. MODIFICATION AND DISPUTE RESOLUTION**

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

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 Amended Consent Judgment. Such modification could include: (a) an
6 extension of the Compliance Date (with a negotiated increase in the settlement payments to be made
7 by Settling Defendant); or (b) any other modification that the Parties agree is appropriate and in the
8 public interest. Grounds for an extension or other modification may include, but are not limited to,
9 that, despite Settling Defendant’s good faith efforts to reduce acrylamide, it is not Feasible for one
10 or 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 Amended
20 Consent 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 Amended Consent Judgment to conform to such ruling with respect to such portion of the Covered
2 Products 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 Amended Consent
7 Judgment to conform to such ruling in order to avoid unfair, inconsistent, or anti-competitive
8 results.

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

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

1 “no significant risk level” for acrylamide would not necessarily entitle a Party to a modification of
2 the terms of this Amended Consent Judgment corresponding in a linear relationship with such a
3 change.

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

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

23 **7. CLAIMS COVERED AND RELEASE**

24 **7.1** Provided that Settling Defendant complies in full with its obligations under Section 5
25 hereof, this Amended Consent Judgment is a full, final, and binding resolution between CEH on
26 behalf of itself and the public interest and Settling Defendant and Settling Defendant’s parents,
27 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
28 agents, shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to

1 which Settling Defendant directly or indirectly distributes or sells Covered Products, including but
2 not limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees
3 (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn
4 about alleged exposure to acrylamide contained in Covered Products that were manufactured or
5 purchased by Settling Defendant prior to the applicable Compliance Date.

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

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

23 **8. PROVISION OF NOTICE**

24 8.1 When CEH is entitled to receive any notice under this Amended Consent Judgment,
25 the notice shall be sent by first class and electronic mail to:

26 Howard Hirsch
27 Lexington Law Group
28 503 Divisadero Street
San Francisco, CA 94117
hhirsch@lexlawgroup.com

1 8.2 When Settling Defendant is entitled to receive any notice under this Amended
2 Consent Judgment, the notice shall be sent by first class and electronic mail to:

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

8 8.3 Any Party may modify the person and/or address to whom the notice is to be sent by
9 sending the other Party notice by first class and electronic mail.

10 **9. COURT APPROVAL**

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

16 9.2 If this Amended Consent Judgment is not entered by the Court, it shall be of no force
17 or effect and shall not be introduced into evidence or otherwise used in any proceeding for any
18 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

19 **10. GOVERNING LAW AND CONSTRUCTION**

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

22 **11. ATTORNEYS' FEES**

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

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

28 **12. ENTIRE AGREEMENT**

 12.1 This Amended 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

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

14 **13. RETENTION OF JURISDICTION**

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

19 **14. AUTHORITY TO STIPULATE TO AMENDED CONSENT JUDGMENT**

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

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

25 15.1 Nothing in this Amended Consent Judgment shall preclude CEH from resolving any
26 claim against any entity other than Settling Defendant on terms that are different from those
27 contained in this Amended Consent Judgment.
28

1 **16. COMPLIANCE WITH REPORTING REQUIREMENTS**

2 16.1 CEH agrees to comply with the reporting form requirements referenced in Health
3 and Safety Code section 25249.7(f).

4 **17. EXECUTION IN COUNTERPARTS**

5 17.1 The stipulations to this Amended Consent Judgment may be executed in counterparts
6 and by means of facsimile or portable document format (pdf), which taken together shall be deemed
7 to constitute one document.

8 **IT IS SO STIPULATED:**

9 Dated: May 8, 2020

CENTER FOR ENVIRONMENTAL HEALTH



Signature

Michael Green

Printed Name

CEO

Title

17 Dated: _____, 2020

THE HAIN CELESTIAL GROUP, INC.

Signature

Printed Name

Title

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

28 Dated: _____

Judge of the Superior Court

1 **16. COMPLIANCE WITH REPORTING REQUIREMENTS**

2 16.1 CEH agrees to comply with the reporting form requirements referenced in Health
3 and Safety Code section 25249.7(f).

4 **17. EXECUTION IN COUNTERPARTS**

5 17.1 The stipulations to this Amended Consent Judgment may be executed in counterparts
6 and by means of facsimile or portable document format (pdf), which taken together shall be deemed
7 to constitute one document.

8 **IT IS SO STIPULATED:**

9 Dated: _____, 2020

CENTER FOR ENVIRONMENTAL HEALTH

11 _____
Signature

12 _____
Printed Name

13 _____
Title

14
15
16
17 Dated: May 13, 2020

THE HAIN CELESTIAL GROUP, INC.

18 _____
19 Kristy Meringolo
Signature

20 _____
21 Kristy Meringolo
Printed Name

22 _____
23 General Counsel
Title

24
25 **IT IS SO ORDERED, ADJUDGED,
26 AND DECREED**

27
28 Dated: _____

Judge of the Superior Court