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

CENTER FOR ENVIRONMENTAL HEALTH,)	Case No. RG 15-782610
)	
Plaintiff,)	[PROPOSED] CONSENT JUDGMENT
)	AS TO CORNFIELDS, INC.
v.)	
)	
SAVE MART SUPERMARKETS, <i>et al.</i> ,)	
)	
Defendants.)	
)	
)	

1. INTRODUCTION

1.1 The Parties to this Consent Judgment are the Center For Environmental Health (“CEH”), a California non-profit corporation, and Cornfields, Inc. (“Settling Defendant”). CEH and Settling Defendant (the “Parties”) enter into this Consent Judgment to settle certain claims asserted by CEH against Settling Defendant as set forth in the operative complaint (“Complaint”) in the above-captioned matter. This Consent Judgment covers the acrylamide content of snack food products derived from potatoes or sweet potatoes, including potato or sweet potato flour,

1 such as vegetable chips, vegetable sticks and vegetable straws (“Covered Products”) that are sold,
2 distributed, or offered for sale by Settling Defendant in the State of California.

3 1.2 On or about March 25, 2016, CEH provided a 60-day Notice of Violation of
4 Proposition 65 to the California Attorney General, the District Attorneys of every county in
5 California, the City Attorneys of every California city with a population greater than 750,000 and
6 to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing
7 persons to acrylamide contained in vegetable chips without first providing a clear and reasonable
8 Proposition 65 warning. On or about August 19, 2016, CEH provided an amended 60-day Notice
9 of Violation of Proposition 65 to the same recipients alleging that Settling Defendant violated
10 Proposition 65 by exposing persons to acrylamide contained in Covered Products without first
11 providing a clear and reasonable Proposition 65 warning.

12 1.3 Settling Defendant is a corporation or other business entity that manufactures,
13 distributes, sells or offers for sale Covered Products that are sold in the State of California or has
14 done so in the past.

15 1.4 On August 19, 2015, CEH filed the Complaint in the above-captioned matter. On
16 or about August 19, 2016, CEH named Settling Defendant as a defendant in that action pursuant
17 to California Code of Civil Procedure § 474. Upon entry of this Consent Judgment, the operative
18 Complaint in that action is deemed amended such that the term “Products” as to Settling
19 Defendant only means Covered Products.

20 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
21 has jurisdiction over the allegations of violations contained in the Complaint and personal
22 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper
23 in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent
24 Judgment as a full and final resolution of all claims which were or could have been raised in the
25 Complaint based on the facts alleged therein with respect to Covered Products manufactured,
26 distributed, and/or sold by Settling Defendant.

27 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the
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1 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with
2 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
3 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
4 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
5 other pending or future legal proceedings. This Consent Judgment is the product of negotiation
6 and compromise and is accepted by the Parties solely for purposes of settling, compromising, and
7 resolving issues disputed in this Action.

8 **2. INJUNCTIVE RELIEF**

9 2.1 **Reformulation of Covered Products.** Upon notice of entry of this Consent
10 Judgment by the Court (the “Effective Date”), Settling Defendant shall not purchase,
11 manufacture, ship, sell or offer for sale Covered Products that will be sold or offered for sale in
12 California that contain a concentration of more than 490 parts per billion (“ppb”) acrylamide by
13 weight (the “Reformulation Level”), such concentration to be determined by use of a test
14 performed by an accredited laboratory using either GC/MS (Gas Chromatograph/Mass
15 Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry) or any other testing
16 method agreed upon by the Parties.

17 **3. ENFORCEMENT**

18 3.1 **General Enforcement Provisions.** CEH may, by motion or application for an
19 order to show cause before this Court, enforce the terms and conditions contained in this Consent
20 Judgment. Any action to enforce alleged violations of Section 2.1 by Settling Defendant shall be
21 brought exclusively pursuant to this Section 3, and be subject to the meet and confer requirement
22 of Section 3.2.5 if applicable.

23 3.2 **Enforcement of Reformulation Commitment.**

24 3.2.1 Covered Product Identification. Within 30 days after the Effective Date,
25 Settling Defendant shall notify CEH of a means sufficient to allow CEH to identify Covered
26 Products supplied or offered by Settling Defendant for sale on or after that date, for example, a
27 unique brand name or characteristic system of product numbering or labeling. Upon written
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1 request by CEH, but no more than once in any calendar year, Settling Defendant shall, within 30
2 days of receiving a request from CEH, update the information provided to CEH pursuant to this
3 Section 3.2.1 by notifying CEH of a means sufficient to allow CEH to identify Covered Products
4 currently supplied or offered for sale by Settling Defendant. If CEH is unable to determine
5 whether a particular product is a Covered Product as to Settling Defendant based on the
6 information provided to CEH pursuant to this Section 3.2.1, Settling Defendant shall cooperate in
7 good faith with CEH in determining whether the product at issue is a Covered Product supplied
8 or offered for sale by Settling Defendant. Information provided to CEH pursuant to this Section
9 3.2.1, including but not limited to the identities of parties to contracts between Settling Defendant
10 and third parties, may be designated by Settling Defendant as competitively sensitive confidential
11 business information, and if so designated shall not be disclosed to any person without the written
12 permission of Settling Defendant. Any motions or pleadings or any other court filings that may
13 reveal information designated as competitively sensitive confidential business information
14 pursuant to this Section shall be submitted in accordance with California Rules of Court 8.46 and
15 2.550, et seq. This provision shall sunset seven years after the Effective Date.

16 3.2.2 Notice of Violation. In the event that CEH identifies a Covered Product
17 that was sold or offered for sale to California consumers with a best-by or sell-by (or equivalent)
18 date more than 6 months after the Effective Date, and for which CEH has laboratory test results
19 showing that the Covered Product has an acrylamide level exceeding the Reformulation Level,
20 CEH may issue a Notice of Violation pursuant to this Section.

21 3.2.3 Service of Notice of Violation and Supporting Documentation.

22 3.2.3.1 Subject to Section 3.2.2, the Notice of Violation shall be sent to the
23 person(s) identified in Section 7.2 to receive notices for Settling Defendant, and must be served
24 within sixty (60) days of the later of the date the Covered Products at issue were purchased or
25 otherwise acquired by CEH or the date that CEH can reasonably determine that the Covered
26 Products at issue were manufactured, shipped, sold or offered for sale by Settling Defendant,
27 provided, however, that CEH may have up to an additional sixty (60) days to send the Notice of
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1 Violation if, notwithstanding CEH’s good faith efforts, the test data required by Section 3.2.3.2
2 below cannot be obtained by CEH from its laboratory before expiration of the initial sixty (60)
3 day period.

4 3.2.3.2 The Notice of Violation shall, at a minimum, set forth: (a) the date the
5 Covered Products were purchased; (b) the location at which the Covered Products were
6 purchased; (c) a description of the Covered Products giving rise to the alleged violation,
7 including the name and address of the retail entity from which the sample was obtained and
8 pictures of the product packaging from all sides, which identifies the product lot; and (d) all test
9 data obtained by CEH regarding the Covered Products and supporting documentation sufficient
10 for validation of the test results, including any laboratory reports, quality assurance reports and
11 quality control reports associated with testing of the Covered Products.

12 3.2.4 Notice of Election of Response. No more than thirty (30) days after
13 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to
14 CEH whether it elects to contest the allegations contained in a Notice of Violation (“Notice of
15 Election”). Failure to provide a Notice of Election within thirty (30) days of effectuation of
16 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.
17 Upon notice to CEH, Settling Defendant may have up to an additional sixty (60) days to elect if,
18 notwithstanding Settling Defendant’s good faith efforts, Settling Defendant is unable to verify the
19 test data provided by CEH before expiration of the initial thirty (30) day period.

20 3.2.4.1 If a Notice of Violation is contested, the Notice of Election shall
21 include all documents upon which Settling Defendant is relying to contest the alleged violation,
22 including all available test data. If Settling Defendant or CEH later acquires additional test or
23 other data regarding the alleged violation during the meet and confer period described in Section
24 3.2.5, it shall notify the other party and promptly provide all such data or information to the party
25 unless either the Notice of Violation or Notice of Election has been withdrawn.

26 3.2.5 Meet and Confer. If a Notice of Violation is contested, CEH and Settling
27 Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of
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1 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw
2 the original Notice of Election contesting the violation and serve a new Notice of Election to not
3 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay
4 \$2,500 in addition to any payment required under this Consent Judgment. At any time, CEH may
5 withdraw a Notice of Violation, in which case for purposes of this Section 3.2 the result shall be
6 as if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of
7 Violation results within thirty (30) days of a Notice of Election to contest, CEH may file an
8 enforcement motion or application pursuant to Section 3.1. In any such proceeding, CEH may
9 seek whatever fines, costs, penalties, attorneys' fees or other remedies are provided by law for an
10 alleged failure to comply with the Consent Judgment.

11 3.2.6 Non-Contested Notices. If Settling Defendant elects to not contest the
12 allegations in a Notice of Violation, it shall undertake corrective action(s) and make payments, if
13 any, as set forth below.

14 3.2.6.1 Settling Defendant shall include in its Notice of Election a detailed
15 description with supporting documentation of the corrective action(s) that it has undertaken or
16 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,
17 provide reasonable assurance that all Covered Products having the same lot number as that of the
18 Covered Product identified in CEH's Notice of Violation (the "Noticed Covered Products") will
19 not be thereafter sold in California or offered for sale to California customers by Settling
20 Defendant and that Settling Defendant has sent instructions to any retailers or customers that offer
21 the Noticed Covered Products for sale to cease offering the Noticed Covered Products for sale to
22 California consumers and to return all such Noticed Covered Products to Settling Defendant if
23 Settling Defendant has reason to believe the Noticed Covered Products are still offered for sale to
24 California consumers. Settling Defendant shall keep for a period of one year and make available
25 to CEH upon reasonable notice (which shall not exceed more than one request per year) for
26 inspection and copying records of any correspondence regarding the foregoing. If there is a
27 dispute over the corrective action, Settling Defendant and CEH shall meet and confer before
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1 seeking any remedy in court. In no case shall CEH issue more than one Notice of Violation per
2 manufacturing lot of a type of Covered Product, nor shall CEH issue more than two Notices of
3 Violation in the first calendar year following the Effective Date.

4 3.2.6.2 If the Notice of Violation is the first, second, third or fourth Notice of
5 Violation received by Settling Defendant under Section 3.2.1 that was not successfully contested
6 or withdrawn, then Settling Defendant shall pay \$15,000 for each Notice of Violation. If Settling
7 Defendant has received more than four (4) Notices of Violation under Section 3.2.2 that were not
8 successfully contested or withdrawn, then Settling Defendant shall pay \$25,000 for each Notice
9 of Violation. If Settling Defendant produces with its Notice of Election test data for the Covered
10 Product that: (i) was conducted prior to the date CEH gave Notice of Violation; (ii) was
11 conducted on the same or same type of Covered Product; and (iii) demonstrates acrylamide levels
12 below the Reformulation Level, then any payment under this Section shall be reduced by 100
13 percent (100%) for the first Notice of Violation, by seventy-five percent (75%) for the second
14 Notice of Violation and by fifty percent (50%) for any subsequent Notice of Violation. In no
15 case shall Defendant be obligated to pay more than \$100,000 for uncontested Notices of
16 Violation in any calendar year irrespective of the total number of Notices of Violation issued.

17 3.2.7 Payments. Any payments under Section 3.2 shall be made by check
18 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a
19 Notice of Election triggering a payment and shall be used as reimbursement for costs for
20 investigating, preparing, sending and prosecuting Notices of Violation, and to reimburse
21 attorneys’ fees and costs incurred in connection with these activities.

22 3.3 **Repeat Violations.** If Settling Defendant has received four (4) or more Notices of
23 Violation concerning the same type of Covered Product that were not successfully contested or
24 withdrawn in any two (2) year period then, at CEH’s option, CEH may seek whatever fines,
25 costs, penalties, attorneys’ fees or other remedies that are provided by law for failure to comply
26 with the Consent Judgment. Prior to seeking such relief, CEH shall meet and confer with Settling
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1 Defendant for at least thirty (30) days to determine if Settling Defendant and CEH can agree on
2 measures that Settling Defendant can undertake to prevent future alleged violations.

3 **4. PAYMENTS**

4 4.1 **Payments by Settling Defendant.** Within fifteen (15) calendar days of the
5 Effective Date, Settling Defendant shall pay the total sum of \$111,250 as a settlement payment as
6 further set forth in this Section.

7 4.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall
8 be paid in five (5) separate checks in the amounts specified below and delivered as set forth
9 below. Any failure by Settling Defendant to comply with the payment terms herein shall be
10 subject to a stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each
11 day the full payment is not received after the applicable payment due date set forth in Section 4.1.
12 The late fees required under this Section shall be recoverable, together with reasonable attorneys'
13 fees, in an enforcement proceeding brought pursuant to Section 3 of this Consent Judgment. The
14 funds paid by Settling Defendant shall be allocated as set forth below between the following
15 categories and made payable as follows:

16 4.2.1 \$10,480 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).
17 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §
18 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
19 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
20 payment for \$7,860 shall be made payable to OEHHA and associated with taxpayer identification
21 number 68-0284486. This payment shall be delivered as follows:

22 For United States Postal Service Delivery:
23 Attn: Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 P.O. Box 4010, MS #19B
27 Sacramento, CA 95812-4010

26 For Non-United States Postal Service Delivery:
27 Attn: Mike Gyurics
28 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment

1001 I Street, MS #19B
Sacramento, CA 95814

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2 The CEH portion of the civil penalty payment for \$2,620 shall be made
3 payable to the Center For Environmental Health and associated with taxpayer identification
4 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
5 Street, San Francisco, CA 94117.

6 4.2.2 \$15,720 as a payment in lieu of civil penalty to CEH pursuant to Health &
7 Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH shall
8 use such funds to continue its work educating and protecting people from exposures to toxic
9 chemicals, including toxic chemicals in food. In addition, as part of its Community
10 Environmental Action and Justice Fund, CEH will use four percent (4%) of such funds to award
11 grants to grassroots environmental justice groups working to educate and protect people from
12 exposures to toxic chemicals. The method of selection of such groups can be found at the CEH
13 web site at www.ceh.org/justicefund. The payment pursuant to this Section shall be made
14 payable to the Center For Environmental Health and associated with taxpayer identification
15 number 94-3251981.

16 4.2.3 \$85,050 as a reimbursement of a portion of CEH's reasonable attorneys'
17 fees and costs. The attorneys' fees and cost reimbursement shall be made in two separate checks
18 as follows: (a) \$71,865 payable to the Lexington Law Group and associated with taxpayer
19 identification number 94-3317175; and (b) \$13,185 payable to the Center For Environmental
20 Health and associated with taxpayer identification number 94-3251981. These payments shall be
21 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

22 **5. MODIFICATION AND DISPUTE RESOLUTION**

23 5.1 **Modification.** This Consent Judgment may be modified from time to time by
24 express written agreement of the Parties, with the approval of the Court, or by an order of this
25 Court upon motion and in accordance with law.

26 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
27 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
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1 modify the Consent Judgment.

2 **6. CLAIMS COVERED AND RELEASE**

3 6.1 This Consent Judgment is a full, final and binding resolution between CEH on
4 behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries,
5 affiliated entities that are under common ownership, directors, officers, employees, agents,
6 shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to
7 which Settling Defendant directly or indirectly distributes or sells Covered Products, including
8 but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors and
9 licensees, including specifically Whole Foods Market California, Inc. and Mrs. Gooch’s Natural
10 Food Markets, Inc. (“Downstream Defendant Releasees”), of any violation of Proposition 65
11 based on failure to warn about alleged exposure to acrylamide contained in Covered Products that
12 were sold, distributed or offered for sale by Settling Defendant prior to the Effective Date.

13 6.2 CEH, for itself, its agents, successors and assigns, releases, waives, and forever
14 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream
15 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
16 common law claims that have been or could have been asserted by CEH individually or in the
17 public interest regarding the failure to warn about exposure to acrylamide arising in connection
18 with Covered Products manufactured, distributed or sold by Settling Defendant prior to the
19 Effective Date.

20 6.3 Compliance with the terms of this Consent Judgment by Settling Defendant shall
21 constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees and
22 Downstream Defendant Releasees with respect to any alleged failure to warn about acrylamide in
23 Covered Products manufactured, distributed or sold by Settling Defendant after the Effective
24 Date.

25 **7. PROVISION OF NOTICE**

26 7.1 When CEH is entitled to receive any notice under this Consent Judgment, the
27 notice shall be sent by first class and electronic mail to:

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

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

Cornfields Inc.Attention: Claire Cretors
3898 Sunset Ave
Waukegan, IL 60087
ccretors@cornfieldsinc.com

Sidley Austin LLP
Livia M. Kiser
1 South Dearborn Street
Chicago, Illinois 60603
lkiser@sidley.com

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

8. COURT APPROVAL

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

8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

9. GOVERNING LAW AND CONSTRUCTION

9.1 The terms of this Consent Judgment shall be governed by the laws of the State of California.

10. ATTORNEYS' FEES

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

1 10.2 Nothing in this Section 10 shall preclude a party from seeking an award of
2 sanctions pursuant to law.

3 **11. ENTIRE AGREEMENT**

4 11.1 This Consent Judgment contains the sole and entire agreement and understanding
5 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
6 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
7 and therein. There are no warranties, representations, or other agreements between the Parties
8 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
9 other than those specifically referred to in this Consent Judgment have been made by any Party
10 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
11 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
12 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
13 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
14 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
15 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
16 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
17 whether or not similar, nor shall such waiver constitute a continuing waiver.

18 **12. RETENTION OF JURISDICTION**

19 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
20 Consent Judgment.

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

22 13.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
23 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
24 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

25 **14. NO EFFECT ON OTHER SETTLEMENTS**

26 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
27 against an entity that is not Settling Defendant on terms that are different than those contained in
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1 this Consent Judgment.

2 **15. EXECUTION IN COUNTERPARTS**

3 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by
4 means of facsimile or portable document format (pdf), which taken together shall be deemed to
5 constitute one document.

6 **IT IS SO ORDERED, ADJUDGED,**
7 **AND DECREED**

8 Dated: _____
9 _____
10 Judge of the Superior Court

11 **IT IS SO STIPULATED:**

<p>12 Dated: <u>8 Aug</u>, 2016</p>	<p>13 CENTER FOR ENVIRONMENTAL HEALTH</p> <p>14 </p> <p>15 _____</p> <p>16 Signature</p> <p>17 <u>CAROL P. EMANO</u></p> <p>18 _____</p> <p>19 Printed Name</p> <p>20 <u>ASSOCIATE DIRECTOR</u></p> <p>21 _____</p> <p>22 Title</p>
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Dated: August 5th, 2016

CORNFIELDS, INC.

Claire E. Cretes
Signature

CLAIRE E. CRETES
Printed Name

PRESIDENT
Title