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

CENTER FOR ENVIRONMENTAL HEALTH,)	Case No. RG 17-851470
)	
Plaintiff,)	[PROPOSED] CONSENT JUDGMENT
)	AS TO SNACK INNOVATIONS INC.
v.)	
)	
SNACK INNOVATIONS INC., <i>et al.</i> ,)	
)	
Defendants.)	
)	
)	
)	

1. DEFINITIONS

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

1.2 “Covered Products” means air popped potato or sweet potato based snack food products, including but not limited to Smart Fries air popped potato sticks. “Covered Products” do not include sliced potato chips or sliced sweet potato chips. The Covered Products referenced in this Consent Judgment are similar to the “pellet-based popped potato crisps” covered by the

Consent Judgment as to Defendant Popchips, Inc., entered January 8, 2012, in *People v. Popchips, Inc.*, San Francisco County Superior Court Case No. CGC-11-516122.¹

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

2. INTRODUCTION

2.1 The Parties to this Consent Judgment are the Center for Environmental Health, a California non-profit corporation (“CEH”), and Snack Innovations 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 Complaint.

2.2 On or about September 30, 2016, CEH provided a 60-day Notice of Violation of Proposition 65 to the California Attorney General, to the District Attorneys of every county in California, to the City Attorneys of every California city with a population greater than 750,000, and to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons in California to acrylamide contained in Covered Products without first providing a clear and reasonable Proposition 65 warning (the “Notice”).

2.3 Settling Defendant is a corporation or other business entity that manufactures, distributes, sells, or offers for sale Covered Products that are sold in the State of California or has done so at times relevant to the Complaint.

2.4 On March 2, 2017, CEH filed the initial Complaint in the above-captioned matter, naming Settling Defendant as an original defendant. On April 3, 2017, CEH filed a First Amended Complaint.

2.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent

¹ The Attorney General’s Popchips Consent Judgment is attached hereto as Exhibit A.

Judgment as a full and final resolution of all claims which were or could have been raised in the Complaint based on the facts alleged therein and in the Notice with respect to Covered Products manufactured, distributed, and/or sold by Settling Defendant.

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

3. INJUNCTIVE RELIEF

3.1 **Reformulation of Covered Products.** As of the Effective Date, Settling Defendant shall not purchase, manufacture, ship, sell, or offer for sale Covered Products that will be sold or offered for sale in California that exceed the following acrylamide concentration levels (the “Reformulation Levels”), such concentration to 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:

3.1.1 The average acrylamide concentration shall not exceed 350 parts per billion (“ppb”) by weight (the “Average Level”). The Average Level is determined by randomly selecting and testing at least 1 sample each from 5 different lots of a particular type of Covered Product (or the maximum number of lots available for testing if less than 5) during a testing period of at least sixty (60) days.

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

1 **4. ENFORCEMENT**

2 **4.1 General Enforcement Provisions.** CEH may, by motion or application for an
3 order to show cause before this Court, enforce the terms and conditions contained in this Consent
4 Judgment. Any action to enforce alleged violations of Section 3.1 by Settling Defendant shall be
5 brought exclusively pursuant to this Section 4, and be subject to the notice of violation
6 requirement of Section 4.2.2, and the meet and confer requirement of Section 4.2.5 if applicable.

7 **4.2 Enforcement of Reformulation Commitment.**

8 **4.2.1 Covered Product Identification.** Within thirty (30) days after the
9 Effective Date, Settling Defendant shall notify CEH of a means sufficient to allow CEH to
10 identify Covered Products supplied or offered by Settling Defendant for sale on or after that date
11 by, for example, a unique brand name or characteristic system of product numbering or labeling.
12 Settling Defendant shall provide a copy of the same notice to the Oakland Office of the Attorney
13 General, Attn: Laura Zuckerman, subject and pursuant to Evidence Code § 1040. Except as
14 provided for in Health & Safety Code § 25249.7(i), the Attorney General shall maintain, and
15 ensure that all recipients maintain, the submitted information as confidential official information
16 to the full extent authorized in Evidence Code § 1040. Upon written request by CEH, but no
17 more than once in any calendar year, Settling Defendant shall, within thirty (30) days of receiving
18 a request from CEH, update the information provided to CEH pursuant to this Section 4.2.1 by
19 notifying CEH of a means sufficient to allow CEH to identify Covered Products currently
20 supplied or offered for sale by Settling Defendant. If CEH is unable to determine whether a
21 particular product is a Covered Product as to Settling Defendant based on the information
22 provided to CEH pursuant to this Section 4.2.1, Settling Defendant shall cooperate in good faith
23 with CEH in determining whether the product at issue is a Covered Product supplied or offered
24 for sale by Settling Defendant. Information provided to CEH pursuant to this Section 4.2.1,
25 including but not limited to the identities of parties to contracts between Settling Defendant and
26 third parties, may be designated by Settling Defendant as competitively sensitive confidential
27 business information, and if so designated shall not be disclosed to any person without the written

1 permission of Settling Defendant. Any motions or pleadings or any other court filings that may
2 reveal information designated as competitively sensitive confidential business information
3 pursuant to this Section shall be submitted in accordance with California Rules of Court 8.46 and
4 2.550, *et seq.*, if applicable.

5 4.2.2 Notice of Violation. Prior to initiating enforcement of Section 3.1, CEH
6 must issue a Notice of Violation. CEH may issue a Notice of Violation only in the event that
7 CEH purchases a Covered Product in California that was sold or offered for sale by Settling
8 Defendant with a best-by or sell-by (or equivalent) date more than twelve (12) months after the
9 Effective Date, and for which CEH has laboratory test results showing that the Covered Product
10 exceeds the Unit Level.

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 sixty (60) 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 shipped, sold, or offered for sale by Settling Defendant, provided, however, that CEH may have
17 up to an additional sixty (60) days to send the Notice of Violation if, notwithstanding CEH's
18 good faith efforts, the test data required by Section 4.2.3.2 below cannot be obtained by CEH
19 from its laboratory before expiration of the initial sixty (60) day period.

20 4.2.3.2 The Notice of Violation shall, at a minimum, set forth: (a) the date
21 the Covered Product was purchased; (b) the location at which the Covered Product was
22 purchased; (c) a description of the Covered Product giving rise to the alleged violation, including
23 the name and address of the retail entity from which the sample was obtained and pictures of the
24 product packaging from all sides, which identifies the product lot; and (d) all test data obtained
25 by CEH regarding the Covered Product and supporting documentation sufficient for validation of
26 the test results, including any laboratory reports, quality assurance reports, and quality control
27 reports associated with testing of the Covered Product.

1 4.2.4 Notice of Election of Response. No more than thirty (30) days after
2 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to
3 CEH whether they elect to contest the allegations contained in a Notice of Violation (“Notice of
4 Election”). Failure to provide a Notice of Election within thirty (30) days of effectuation of
5 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.
6 Upon notice to CEH, Settling Defendant may have up to an additional sixty (60) days to elect if,
7 notwithstanding Settling Defendant’s good faith efforts, Settling Defendant is unable to verify the
8 test data provided by CEH before expiration of the initial thirty (30) day period.

9 4.2.4.1 If a Notice of Violation is contested, the Notice of Election shall
10 include all documents upon which Settling Defendant is relying to contest the alleged violation,
11 including all available test data. If Settling Defendant or CEH later acquires additional test or
12 other data regarding the alleged violation during the meet and confer period described in Section
13 4.2.5, they shall notify the other Party and promptly provide all such data or information to the
14 Party unless either the Notice of Violation or Notice of Election has been withdrawn.

15 4.2.5 Meet and Confer. If a Notice of Violation is contested, CEH and Settling
16 Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of
17 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw
18 the original Notice of Election contesting the violation and serve a new Notice of Election to not
19 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay
20 \$2,500 in addition to any other payment required under this Consent Judgment. At any time,
21 CEH may withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the
22 result shall be as if CEH never issued any such Notice of Violation. If no informal resolution of a
23 Notice of Violation results within thirty (30) days of a Notice of Election to contest, CEH may
24 file an enforcement motion or application pursuant to Section 4.1. In any such proceeding, CEH
25 may seek whatever fines, costs, penalties, attorneys’ fees, or other remedies are provided by law
26 for an alleged failure to comply with the Consent Judgment.

1 4.2.6 Non-Contested Notices. If Settling Defendant elects to not contest the
2 allegations in a Notice of Violation, it shall undertake corrective action(s) and make payments, if
3 any, as set forth below.

4 4.2.6.1 Settling Defendant shall include in its Notice of Election a detailed
5 description with supporting documentation of the corrective action(s) that they have undertaken
6 or propose to undertake to address the alleged violation. Any such correction shall, at a
7 minimum, provide reasonable assurance that all Covered Products having the same lot number as
8 that of the Covered Product identified in CEH's Notice of Violation (the "Noticed Covered
9 Products") will not be thereafter sold in California or offered for sale to California customers by
10 Settling Defendant, and that Settling Defendant has sent instructions to any retailers or customers
11 that offer the Noticed Covered Products for sale to cease offering the Noticed Covered Products
12 for sale to California consumers and to return all such Noticed Covered Products to Settling
13 Defendant if Settling Defendant has reason to believe the Noticed Covered Products are still
14 offered for sale to California consumers. Settling Defendant shall keep for a period of one year
15 and make available to CEH upon reasonable notice (which shall not exceed more than one
16 request per year) for inspection and copying records of any correspondence regarding the
17 foregoing. If there is a dispute over the corrective action, Settling Defendant and CEH shall meet
18 and confer before seeking any remedy in court. In no case shall CEH issue more than one Notice
19 of Violation per manufacturing lot of a type of Covered Product, nor shall CEH issue more than
20 two Notices of Violation in the first calendar year following the Effective Date.

21 4.2.6.2 If the Notice of Violation is the first, second, third, or fourth Notice
22 of Violation received by Settling Defendant under Section 4.2.1 that was not successfully
23 contested or withdrawn, then Settling Defendant shall pay \$15,000 for each Notice of Violation.
24 If Settling Defendant has received more than four (4) Notices of Violation under Section 4.2.2
25 that were not successfully contested or withdrawn, then Settling Defendant shall pay \$25,000 for
26 each Notice of Violation. If Settling Defendant produces with its Notice of Election test data for
27 the Covered Product that: (i) was conducted prior to the date CEH gave Notice of Violation;

(ii) was conducted on the same type of Covered Product; and (iii) demonstrates acrylamide levels below the Unit Level, then any payment under this Section shall be reduced by 100 percent (100%) for the first Notice of Violation, by seventy-five percent (75%) for the second Notice of Violation, and by fifty percent (50%) for any subsequent Notice of Violation. In no case shall Settling Defendant be obligated to pay more than \$100,000 for all Notices of Violation not successfully contested or withdrawn in any calendar year irrespective of the total number of Notices of Violation issued.

4.2.7 Payments. Any payments under Section 4.2 shall be made by check payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a Notice of Election triggering a payment and shall be used as reimbursement for costs for investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse attorneys’ fees and costs incurred in connection with these activities.

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

5. PAYMENTS

5.1 **Payments by Settling Defendant.** Settling Defendant shall pay the total sum of \$60,000 as a settlement payment as further set forth in this Section according to the following schedule: (a) \$30,000 on or before September 1, 2018; (b) \$30,000 on or before December 1, 2018.

5.2 **Allocation of Payments.** The total settlement amount shall be paid 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

1 Settling Defendant to CEH in the amount of \$100 for each day the full payment is not received
2 after the payment due date set forth in Section 5.1. The late fees required under this Section shall
3 be recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought
4 pursuant to Section 4 of this Consent Judgment. The funds paid by Settling Defendant shall be
5 allocated as set forth below between the following categories and made payable as follows:

6 5.2.1 \$10,276 as a civil penalty pursuant to Health & Safety Code §
7 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety
8 Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental
9 Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
10 payment for \$7,707 shall be made payable to OEHHA and associated with taxpayer identification
11 number 68-0284486. This total amount shall be made in two payments of \$3,853.50 each, due on
12 September 1, 2018 and December 1, 2018 respectively, and payment shall be delivered as
13 follows:

14 For United States Postal Service Delivery:

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

20 For Non-United States Postal Service Delivery:

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

26 The CEH portion of the civil penalty payment for \$2,569 shall be made payable to
27 the Center for Environmental Health and associated with taxpayer identification number 94-
28 3251981. This total amount shall be made in two payments of \$1,284.50 each, due on September
1, 2018 and December 1, 2018 respectively, each of which payments shall be delivered to the
Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

1 5.2.2 \$7,704 as an Additional Settlement Payment (“ASP”) to CEH pursuant to
2 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH
3 intends to restrict use of the ASPs received from this Consent Judgment to the following
4 purposes: the funds will be placed in CEH’s Toxics in Food Fund and used to support CEH
5 programs and activities that seek to educate the public about acrylamide and other toxic
6 chemicals in food, to work with the food industry and agriculture interests to reduce exposure to
7 acrylamide and other toxic chemicals in food, and to thereby reduce the public health impacts and
8 risks of exposure to acrylamide and other toxic chemicals in food sold in California. CEH shall
9 obtain and maintain adequate records to document that ASPs are spent on these activities and
10 CEH agrees to provide such documentation to the Attorney General within thirty (30) days of any
11 request from the Attorney General. The payment pursuant to this Section shall be made payable
12 to the Center for Environmental Health and associated with taxpayer identification number 94-
13 3251981. The total amount under this Section shall be made in two payments of \$3,852 each,
14 due on September 1, 2018 and December 1, 2018 respectively, each of which payments shall be
15 delivered to the Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

16 5.2.3 \$42,020 as a reimbursement of a portion of CEH’s reasonable attorneys’
17 fees and costs. The attorneys’ fees and cost reimbursement shall be made payable to the
18 Lexington Law Group and associated with taxpayer identification number 94-3317175. The total
19 amount due under this Section shall be made in two payments of \$21,010 each, due on September
20 1, 2018 and December 1, 2018 respectively, each of which payments shall be delivered to the
21 Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

22 **6. MODIFICATION AND DISPUTE RESOLUTION**

23 6.1 **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 and prior notice to the
25 Attorney General’s Office, or by an order of this Court upon motion and prior notice to the
26 Attorney General’s Office and in accordance with law.

27 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
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shall attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

7. CLAIMS COVERED AND RELEASE

7.1 Provided that Settling Defendant complies in full with its obligations under Section 5 hereof, this Consent Judgment is a full, final, and binding resolution between CEH on behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which Settling Defendant directly or indirectly distributes or sells Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn about alleged exposure to acrylamide contained in Covered Products that were sold, distributed, or offered for sale by Settling Defendant prior to the Effective Date.

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

7.3 Provided that Settling Defendant complies in full with its obligations under Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant shall constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees and Downstream Defendant Releasees with respect to any alleged failure to warn about acrylamide in Covered Products manufactured, distributed, or sold by Settling Defendant after the Effective Date.

1 **8. PROVISION OF NOTICE**

2 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
3 notice shall be sent by first class and electronic mail to:

4 Howard Hirsch
5 Lexington Law Group
6 503 Divisadero Street
7 San Francisco, CA 94117
8 hhirsch@lexlawgroup.com

9 8.2 When Settling Defendant is entitled to receive any notice under this Consent
10 Judgment, the notice shall be sent by first class and electronic mail to:

11 Stacy E. Don
12 Law Office of Stacy E. Don
13 3007 Douglas Blvd., Suite 100
14 Roseville, CA 95661
15 sdon@sdonlaw.com

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

18 **9. COURT APPROVAL**

19 9.1 This Consent Judgment shall become effective upon the date signed by CEH and
20 Settling Defendant, whichever is later, provided however, that CEH shall prepare and file a
21 Motion for Approval of this Consent Judgment and Settling Defendant shall support entry of this
22 Consent Judgment by the Court.

23 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
24 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
25 purpose, other than to allow the Court to determine if there was a material breach of Section 9.1.

26 **10. GOVERNING LAW AND CONSTRUCTION**

27 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
28 California.

1 **11. ATTORNEYS' FEES**

2 11.1 A Party who unsuccessfully brings or contests an action, motion, or application

1 arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable
2 attorneys' fees and costs.

3 11.2 Nothing in this Section 11 shall preclude a party from seeking an award of
4 sanctions pursuant to law.

5 **12. ENTIRE AGREEMENT**

6 12.1 This Consent Judgment contains the sole and entire agreement and understanding
7 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
8 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
9 and therein. There are no warranties, representations, or other agreements between the Parties
10 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
11 other than those specifically referred to in this Consent Judgment have been made by any Party
12 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
13 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
14 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
15 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
16 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
17 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
18 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
19 whether or not similar, nor shall such waiver constitute a continuing waiver.

20 **13. RETENTION OF JURISDICTION**

21 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
22 Consent Judgment.

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

24 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
25 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
26 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.
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1 **15. NO EFFECT ON OTHER SETTLEMENTS**

2 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
3 against an entity that is not Settling Defendant on terms that are different from those contained in
4 this Consent Judgment. Settling Defendant may move to modify this Consent Judgment pursuant
5 to Section 6 to substitute higher Reformulation Levels that CEH agrees to in a future consent
6 judgment applicable to products similar to the Covered Products, and CEH agrees not to oppose
7 any such motion except for good cause shown.

8 **16. EXECUTION IN COUNTERPARTS**

9 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
10 means of facsimile or portable document format (pdf), which taken together shall be deemed to
11 constitute one document.

12
13 **IT IS SO ORDERED, ADJUDGED,**
14 **AND DECREED**
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16 Dated: _____

17 Judge of the Superior Court
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1 **IT IS SO STIPULATED:**

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3 Dated: 20 Aug, 2018

CENTER FOR ENVIRONMENTAL HEALTH



Signature



Printed Name



Title

11 Dated: _____, 2018

SNACK INNOVATIONS INC.

Signature

Printed Name

Title

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IT IS SO STIPULATED:


<p>Dated: _____, 2018</p>	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Printed Name</p> <p>_____</p> <p>Title</p>
<p>Dated: <u>April 18</u>, 2018</p>	<p>SNACK INNOVATIONS INC.</p> <p> _____</p> <p>Signature</p> <p><u>Allen Benzaken</u> _____</p> <p>Printed Name</p> <p><u>CEO</u> _____</p> <p>Title</p>

Exhibit A

ORIGINAL

BY FAX

KAMALA D. HARRIS
Attorney General of California
LAURA J. ZUCKERMAN
Deputy Attorney General
State Bar No. 161896
TIMOTHY E. SULLIVAN
Deputy Attorney General
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1515 Clay Street, 20th Floor
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Fax: (510) 622-2270
E-mail: Laura.Zuckerman@doj.ca.gov

*Attorneys for People of the State of California
ex rel. Kamala D. Harris, Attorney General of the
State of California*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

PEOPLE OF THE STATE OF
CALIFORNIA *ex rel.* KAMALA D.
HARRIS, ATTORNEY GENERAL OF
THE STATE OF CALIFORNIA,

Plaintiff,

v.

POPCHIPS, INC., a California corporation,
Defendant.

CASE NO. CGC-11-516122

~~[PROPOSED]~~ CONSENT JUDGMENT AS
TO DEFENDANT POPCHIPS, INC.

Date: December 20, 2011

Time: 9:30 a.m.

Dept.: 302

Judge: Hon. Harold E. Kahn

Trial Date: None set.

Action Filed: November 23, 2011

1. INTRODUCTION

A. Background

1.1. On August 26, 2005, the People of the State of California *ex rel.* the Attorney General for the State of California (the "People" or the "Attorney General") filed a complaint for civil penalties and injunctive relief for violations of the Safe Drinking Water and Toxics Enforcement Act of 1986 and unlawful business practices in Superior Court for the County of Los Angeles. The People's complaint ("First AG Complaint") alleges that Defendants in that case,

FILED
San Francisco County Superior Court

JAN - 8 2012

CLERK OF THE COURT
BY: Marta Vallejo
Deputy Clerk

RECD NOV 28 2011

1 captioned *People of the State of California v. Frito-Lay, Inc., et al.* (Case No. BC 338956), failed
2 to provide clear and reasonable warnings that ingestion of the French fries, potato chips, and
3 potato crisps identified in the complaint would result in exposure to acrylamide, a chemical
4 known to the State of California to cause cancer. The First AG Complaint further alleges that
5 under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code
6 section 25249.5 et seq., also known as "Proposition 65," businesses must provide persons with a
7 "clear and reasonable warning" before exposing individuals to this chemical, and that defendants
8 failed to do so. The First AG Complaint also alleges that these acts constitute unlawful acts in
9 violation of the Unfair Competition Law pursuant to Business and Professions Code section
10 17200 et seq.

11 1.2 On February 1, 2008, the Court entered a consent judgment resolving the People's
12 claims against defendants Procter & Gamble Manufacturing Company and Procter & Gamble
13 Distributing Company arising out of the sale of potato crisp products, also known as restructured
14 potato chips. This consent judgment required the Procter & Gamble Manufacturing Company,
15 inter alia, to reduce the level of acrylamide in its covered potato crisp products to 490 parts per
16 billion ("ppb") by February 1, 2011, or be subject to the consent judgment's warning
17 requirements. On August 1, 2008, the Court entered consent judgments in *People v. Frito-Lay,*
18 *Inc., et al.*, resolving the People's claims against defendants Frito-Lay, Inc., Lance, Inc., and
19 Kettle Foods, Inc. arising out of the sale of sliced potato chips and restructured potato chips, or
20 potato crisps. These consent judgments required, inter alia, that defendants reduce the level of
21 acrylamide in their covered potato crisp products to 490 ppb by April 30, 2011, and reduce the
22 level of acrylamide in their covered potato chip products to 281.6 ppb by December 31, 2011, or
23 be subject to the consent judgments' warning requirements.

24 **B. The Popchips Litigation**

25 1.3 Beginning in May 2007, Popchips, Inc. began manufacturing pellet-based popped
26 potato crisps ("Potato Crisps") and shipping them for sale in California. On November 23, 2011,
27 the People filed a complaint for civil penalties and injunctive relief for violations of Proposition
28 65 and unlawful business practices in the Superior Court for the County of San Francisco. The

1 People's Complaint ("Complaint") alleges that defendant Popchips, Inc. failed to provide clear
2 and reasonable warnings that ingestion of the products identified in the Complaint would result in
3 exposure to acrylamide. The Complaint also alleges that these acts constitute unlawful acts in
4 violation of the Unfair Competition Law, pursuant to Business and Professions Code sections
5 17200 et seq.

6 1.4. Popchips, Inc. ("Settling Defendant") is a Delaware corporation that employs more
7 than ten employees, and has employed more than ten employees at all times relevant to the
8 allegations of the Complaint, and that manufactures, distributes, and/or sells Potato Crisp
9 products in the State of California and has done so in the past. Both the People and Settling
10 Defendant shall be referred to as a "Party" to this Consent Judgment, and collectively they shall
11 be referred to herein as the "Parties" to this Consent Judgment.

12 1.5. The products covered by this Consent Judgment (hereinafter, "Covered Products")
13 are those Potato Crisp products manufactured by Settling Defendant and sold by Settling
14 Defendant or its Affiliates (as defined in Paragraph 8 herein) that are identified in Exhibit A.
15 After the Effective Date, should Settling Defendant introduce for sale to consumers in California
16 a Potato Crisp product not described in Exhibit A, then Settling Defendant shall give notice of
17 such new product(s) ("New Product") to the Attorney General in the form of a revised version of
18 Exhibit A. Should the Attorney General object to such notice within 45 days following receipt of
19 such notice, and the Parties are unable to resolve the objection informally, then the Parties shall
20 proceed in accordance with Paragraph 5.1; otherwise, this Consent Judgment shall be deemed to
21 be modified to include such product as a Covered Product.

22 1.6. For purposes of this Consent Judgment only, the People and Settling Defendant
23 stipulate that this Court has jurisdiction over the allegations of violations contained in the
24 People's Complaint and personal jurisdiction over Settling Defendant as to the acts alleged in the
25 People's Complaint, that venue is proper in the County of San Francisco, and that this Court has
26 jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were
27 or could have been raised in the Complaint based on the facts alleged therein.

28 1.7. The People and Settling Defendant stipulate to the entry of this Consent Judgment

1 as a full and final settlement of all claims that were raised in the Complaint (except as specified in
2 Paragraph 8 herein) arising out of the facts or conduct alleged therein. Except as expressly set
3 forth herein, nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy,
4 or defense the Attorney General or Settling Defendant may have in any other or in future legal
5 proceedings unrelated to these proceedings. However, this paragraph shall not diminish or
6 otherwise affect the obligations, responsibilities, and duties of the Parties under this Consent
7 Judgment.

8 1.8. By stipulating to the entry of this Consent Judgment and agreeing to provide the
9 relief and remedies specified herein, Settling Defendant does not admit (a) that it has violated, or
10 threatened to violate, Proposition 65 or Business and Professions Code sections 17200 et seq., or
11 any other law or legal duty; or (b) that the chemical acrylamide in food poses any risk to human
12 health.

13 1.9. The Effective Date of this Consent Judgment shall be the date on which the
14 Consent Judgment is entered as a judgment by this Court.

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

16 2.1. *Target Level and Compliance Date.*

17 Settling Defendant shall reduce the level of acrylamide in its Covered Products shipped
18 for sale in California to 490 parts per billion, calculated pursuant to the protocol described in
19 Paragraph 2.3 (the "Target Level"), or be subject to the provisions of Paragraph 3. Provided that
20 Settling Defendant is at all times in material compliance with its work plan for achieving the
21 Target Level for all Potato Crisps shipped for sale in California (the "Workplan"), a copy of
22 which is attached as Exhibit B to this Consent Judgment, the date by which the Covered Products
23 must be in compliance with the Target Level shall be September 30, 2012 (the "Compliance
24 Date"). If at any time between the Effective Date and the Compliance Date, Settling Defendant is
25 not in material compliance with the Workplan, Settling Defendant shall provide warnings in
26 compliance with Section 3 for all Potato Crisps shipped for sale in California that contain
27 acrylamide in excess of the Target Level. Between the Effective Date and the Compliance Date,
28 Settling Defendant shall continue its program of research, development, and implementation of

1 technologies and methods intended to reduce the presence of acrylamide in the Covered Products
2 shipped for sale in California. Settling Defendant shall endeavor in good faith, using
3 commercially and technologically reasonable efforts, to achieve the Target Level in the Covered
4 Products shipped for sale in California by the Compliance Date. Notwithstanding any other
5 provision of this Paragraph 2.1, once Settling Defendant has achieved the Target Level, it shall be
6 deemed in material compliance with the Workplan, and shall not be obligated to undertake any
7 task identified in the Workplan that has not yet been completed.

8 2.2. "Shipped for sale in California" means Covered Products that Settling Defendant
9 either directly ships into California for sale in California or that it sells to a distributor who
10 Settling Defendant knows will sell the Covered Products to consumers in California. Where a
11 retailer or distributor sells products both in California and other states, Settling Defendant shall
12 take commercially reasonable steps to ensure that, after the Target Level has been reached, the
13 only Covered Products that are sold in California are either (i) Covered Products for which
14 Settling Defendant has complied with Paragraph 2; or (ii) Covered Products for which Settling
15 Defendant has complied with Paragraph 3.

16 2.3. *Standard and Verification.*

17 (a) Testing for acrylamide shall be performed using either GC/MS (Gas
18 Chromatography/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass
19 Spectrometry/Mass Spectrometry), or any other testing method agreed upon by the Parties to this
20 Consent Judgment.

21 (b) Settling Defendant shall collect, over no less than a ten-day period, random
22 samples of each of the Covered Products from at least 30 different batches, or production lots, of
23 such Covered Products produced at locations that supply such Covered Products to California.
24 Each unique stock keeping unit shall be sampled at least once.

25 (c) To comply with the Target Level, testing conducted in accordance with the
26 protocol set forth in Paragraph 2.3(a) of samples selected in accordance with the protocol set forth
27 in Paragraph 2.3(b) must establish that the arithmetic mean of acrylamide levels for the Covered
28 Products sampled is at or below 490 parts per billion with a 95% confidence level, i.e., $p < 0.05$.

1 (d) Between the Effective Date and the Compliance Date, Settling Defendant shall
2 make its test data available to the Attorney General on written request. All test results of
3 acrylamide concentrations, once provided to the Attorney General, shall be public documents, but
4 nothing in this Consent Judgment shall preclude Settling Defendant from claiming business
5 confidentiality as to sales volume, revenue, or profits of any or all of the Covered Products.

6 (e) On or before the Compliance Date, Settling Defendant shall provide the Attorney
7 General with written notice of compliance with the Target Level for Covered Products shipped
8 for sale in California, including the calculation required to demonstrate achievement of the Target
9 Level, and test results (provided separately from any sales or revenue data or related calculations)
10 ("Compliance Report"). Thereafter, Settling Defendant shall be required to conduct additional
11 tests of the Covered Products according to the protocol described in this Paragraph 2.3 both (1) in
12 the first year after the Target Level has been achieved, and (2) during the second year after the
13 Target Level has been achieved, provided there is at least a nine-month interval between the last
14 test conducted in the first year and the first test conducted in the second year. On or before
15 September 30, 2013, Settling Defendant shall provide the Attorney General with a second
16 Compliance Report regarding testing conducted after September 30, 2012. On or before
17 September 30, 2014, Settling Defendant shall provide the Attorney General with a third
18 Compliance Report regarding testing conducted after September 30, 2013. Provided that the
19 second and third Compliance Reports confirm that the Target Level has been maintained for all of
20 the Covered Products shipped for sale in California, as determined by the protocol set forth in
21 Paragraph 2.3, Settling Defendant shall have no further duty to test the Covered Products.

22 (f) If Settling Defendant has not achieved the Target Level by the Compliance Date
23 for all of the Covered Products shipped for sale in California, it shall provide warnings for the
24 Covered Products shipped for sale in California as provided in Paragraph 3. Settling Defendant
25 may continue testing of the Covered Products until tests demonstrate that the Target Level has
26 been achieved for all of the Covered Products shipped for sale in California, at which time, upon
27 providing the Attorney General with written notice of compliance, including the calculation
28 required to demonstrate achievement of the Target Level, and test results (provided separately

1 from any sales or revenue data or related calculations), Settling Defendant shall have no further
2 duty to warn.

3 (g) After Settling Defendant has demonstrated that the Target Level has been
4 achieved, if the Attorney General believes that the Target Level has not been achieved, the
5 Attorney General may apply to the Court for enforcement of this Consent Judgment based on
6 results of the Attorney General's own testing showing that the Target Level has not been
7 achieved. Any data used by the Attorney General for this purpose must be the result of testing
8 and analysis performed by methods consistent with Paragraph 2.3(a) and include as many
9 samples of each Covered Product as are required by Paragraph 2.3(b). A prima facie showing of
10 violation based on such test results may be rebutted by a showing made in compliance with all
11 aspects of the testing and sampling protocol under Paragraph 2.3.

12 2.4. *Technology Licensing.*

13 The requirements in this Consent Judgment are not contingent upon the use of any
14 particular method to achieve the Target Level, but Settling Defendant shall license any patented
15 technology used to meet the Target Level, whether existing or in the future, to others for use in
16 other food products, at a commercially reasonable price and using other commercially reasonable
17 terms.

18 2.5. *Sales in Schools.*

19 (a) *Direct sales and marketing.* Settling Defendant shall not market Covered Products
20 to California schools for students from kindergarten through grade 12, and shall not directly sell
21 Covered Products to K-12 schools in California without the warning required by Paragraph 3,
22 unless the Covered Products have achieved the Target Level.

23 (b) *Indirect sales and marketing.* Within 30 days of the Effective Date, Settling
24 Defendant (or its agent) shall notify all of its distributors that distribute Covered Products in
25 California that Covered Products may not be sold in California schools for students from
26 kindergarten through grade 12 without the warning required by Paragraph 3 unless the Covered
27 Products have achieved the Target Level. Settling Defendant (or its agent) shall notify its
28 distributors by sending them a letter substantially as provided in Exhibit C. The letter shall

1 request that the receiving distributor provide Settling Defendant a written acknowledgment of
2 receipt. Settling Defendant (or its agent) shall send a follow-up letter, substantially as provided in
3 Exhibit D, to the same distributors who were sent the original letter and who did not send any
4 acknowledgment. Settling Defendant (or its agent) shall maintain files demonstrating compliance
5 with this provision, including the letters sent and receipts of any acknowledgments from retailers,
6 which shall be provided to the Attorney General on written request.

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

8 3.1. If Settling Defendant does not achieve the Target Level by the Compliance Date,
9 Settling Defendant shall, within 30 days and until such time as it achieves the Target Level,
10 provide warnings either:

11 (a) by placing a warning label as described in Paragraph 3.2 (or Paragraph 3.4, if
12 applicable) on the package of all Covered Products shipped for sale in California that Settling
13 Defendant would need to exclude from the calculations in Paragraph 2.3(c) in order to achieve the
14 Target Level; or, at Settling Defendant's option,

15 (b) by providing signs as described in Paragraph 3.3 (or Paragraph 3.4, if applicable)
16 for all Covered Products shipped for sale in California that Settling Defendant would need to
17 exclude from the calculations in Paragraph 2.3(c) in order to achieve the Target Level.

18 3.2. *Label Warnings.* A label warning placed on the package of a Covered Product
19 pursuant to Paragraph 3.1(a) shall either (a) conform to the requirements for the "safe harbor"
20 warning methods set out in Cal. Code Regs., tit. 27, sections 25601 et seq., and, at the Settling
21 Defendant's option, may also state that acrylamide is the chemical in question; or (b) provide
22 substantially the same information as set forth for sign warnings in Paragraph 3.3(b).

23 3.3. *Sign Warnings.*

24 (a) *Form of Sign.* A warning sign shall be rectangular and at least 36 square inches in
25 size, with the word "WARNING" centered one-half of an inch from the top of the sign in ITC
26 Garamond bold condensed type face all in one-half inch capital letters. The body of the warning
27 message shall be in ITC Garamond bold condensed type face. For the body of the warning
28 message, left and right margins of at least one-half of an inch, and a bottom margin of at least

1 one-half inch shall be observed. Larger signs shall bear substantially the same proportions of
2 type size and spacing to sign dimension as a sign that is 36 square inches in size.

3 (b) *Text of Sign.*

4 Unless modified by agreement of the Parties to this Consent Judgment, or as provided in
5 Paragraph 3.4, the sign shall contain the following text (text in brackets is optional):

6 **WARNING**

7 Potato crisps contain acrylamide, a chemical known to the State of California to
8 cause cancer [and reproductive toxicity¹]. Acrylamide is not added to this food,
9 but is created when this food and certain other foods, such as French fries, potato
10 chips, crackers, and cookies, are cooked at high temperatures. The FDA has not
11 advised people to stop eating potato crisps or any other foods containing
12 acrylamide as a result of cooking. For more information, see the FDA's website
13 at www.fda.gov or the California Office of Environmental Health Hazard
14 Assessment's website at www.oehha.ca.gov.

15 (c) *Placement of Sign.* To the extent that Settling Defendant is required to provide a
16 warning under this Consent Judgment and chooses to do so by providing signs, it shall instruct
17 retailers that the sign shall be posted as follows: on the shelf(ves) or in the aisle(s) where the
18 Covered Products for which the warning is being provided are sold; unless the store has less than
19 7,500 square feet of retail space and no more than two cash registers, in which case it may be
20 placed at each cash register. In addition, if the store operates a customer service desk or similar
21 central facility, the sign shall also be posted at that location.

22 (d) *Distribution.* Settling Defendant (or its agent) shall provide signs to retailers who
23 operate retail locations in California that are collectively responsible for at least 70 percent of
24 Settling Defendant's sales in the State of California of Covered Products for which the warning is
25 being provided. Signs shall be provided with a letter substantially as provided in Exhibit E, in
26 which posting instructions are provided. The letter shall request that the receiving retailer provide
27 Settling Defendant a written acknowledgment that the sign will be posted. Settling Defendant
28 shall send a follow up letter substantially as provided in Exhibit F to the same retailers who were

¹ The language in brackets must be added if the Covered Product(s) contain acrylamide in levels exceeding the Maximum Allowable Dose Level for acrylamide as a reproductive toxicant.

1 sent the original letter and who did not send any acknowledgment. Settling Defendant (or its
2 agent) shall maintain files demonstrating compliance with this provision, including the letters sent
3 and receipts of any acknowledgments from retailers, which shall be provided to the Attorney
4 General on written request.

5 3.4. *Alternative Warning Language.* If, after the Compliance Date, any other
6 defendant in this action is allowed to provide warnings using language set forth in another
7 consent judgment entered in this case that differs from the language required by this Consent
8 Judgment, then Settling Defendant may, after providing 60 days' written notice to the Attorney
9 General, use the same warning language set forth in that other consent judgment for labels or the
10 text of signs, to the extent that such language is applicable to the Covered Products, provided that
11 the Attorney General does not make a written objection within thirty days of the Attorney
12 General's receipt of the proposed change in warning language. Settling Defendant may file an
13 application with this Court in order to resolve any objection received from the Attorney General.

14 3.5. *Option to Provide Warnings.*

15 (a) With respect to the Covered Products, Settling Defendant may opt to provide
16 warnings under Paragraph 3.1 and cease its acrylamide reduction efforts under Paragraph 2 if
17 either or both of the following conditions have been satisfied with respect to the Covered
18 Products: (i) acrylamide warnings covering potato crisps manufactured and sold by other
19 companies appear on packages of such products accounting for 20% of sales of all such products
20 in California that are not produced by Settling Defendant, based on IRI sales data; and/or (ii) non-
21 package acrylamide warnings specifically mentioning potato crisps appear at 500 or more store
22 locations in California.

23 (b) If Settling Defendant believes either or both conditions has/have occurred with
24 respect to the Covered Products, it shall give notice of such to the Attorney General, together with
25 documentation evidencing such occurrence. Following such notice, Settling Defendant and the
26 Attorney General will promptly meet and confer regarding the situation, and following that meet
27 and confer period of no longer than 30 days, Settling Defendant, by giving further notice of at
28 least 30 days to the Attorney General, which the Attorney General may extend, at his option, by

1 up to 60 days, may elect to (i) cease acrylamide reduction efforts with respect to the Covered
2 Products; (ii) provide the warnings required by Paragraph 3.1 for the Covered Products; and (iii)
3 within 30 days make all remaining payments required by Paragraph 4 with respect to the Covered
4 Products.

5 3.7. *Extra-Territorial Effect.* Nothing in this Consent Judgment requires that warnings
6 be given for any Covered Products that are not shipped for sale in California.

7 **4. PAYMENTS**

8 4.1. *Initial Civil Penalty.* Settling Defendant shall pay a civil penalty to the Attorney
9 General pursuant to Health & Safety Code section 25249.12 of \$100,000 no later than January 2,
10 2012. In addition, if Settling Defendant has not achieved the Target Level by December 31,
11 2011, for all Covered Products shipped for sale in California, using the methodology set forth in
12 Paragraph 2.3, Settling Defendant shall make additional monthly penalty payments, beginning
13 January 31, 2012, and continuing through August 31, 2012, for each month that Settling
14 Defendant has not achieved the Target Level for all Covered Products shipped for sale in
15 California. These monthly payments shall be as follows:

16	January 31, 2012	\$2,000
17	February 28, 2012	\$3,000
18	March 31, 2012	\$4,000
19	April 30, 2012	\$5,000
20	May 31, 2012	\$6,000
21	June 30, 2012	\$15,000
22	July 31, 2012	\$20,000
23	August 31, 2012	\$25,000

24 Each of these penalty payments shall be divided in accordance with Health & Safety Code
25 section 25249.12, subdivisions (c) and (d), with 75% of the penalty to be deposited in the Safe
26 Drinking Water and Toxic Enforcement Fund, and 25% of the penalty to be paid to the Office of
27 the Attorney General, as follows:

28 ///

Date of payment	Payment to Safe Drinking Water and Toxic Enforcement Fund	Payment to Office of the Attorney General
January 2, 2012	\$75,000	\$25,000
January 31, 2012	\$1,500	\$500
February 28, 2012	\$2,250	\$750
March 31, 2012	\$3,000	\$1,000
April 30, 2012	\$3,750	\$1,250
May 31, 2012	\$4,500	\$1,500
June 30, 2012	\$11,250	\$3,750
July 31, 2012	\$15,000	\$5,000
August 31, 2012	\$18,750	\$6,250

(a) The 75% share of the penalties to be deposited in the Safe Drinking Water and Toxic Enforcement Fund shall be paid by check payable to the Office of Environmental Health Hazard Assessment, with the check to bear the notation "Proposition 65 – AG Matter ID OK2011950032."

(b) The 25% share of the penalties to be paid to the Office of the Attorney General shall be paid by check payable to the "California Department of Justice – Litigation Deposit Fund." The check shall bear on its face "Proposition 65 Recoveries Fund" and the Attorney General's internal reference number for this matter (OK2011950032). The money paid to the Attorney General's Office pursuant to this paragraph shall be administered by the California Department of Justice and shall be used by the Environment Section of the Public Rights Division of the Attorney General's Office, until all funds are exhausted, for any of the following purposes:

(1) implementation of the Attorney General's authority to protect the environment and natural resources of the State pursuant to Government Code section 12600 et seq. and as Chief Law Officer of the State of California pursuant to Article V, section 13 of the California Constitution; (2) enforcement of laws related to environmental protection, including, but not limited to, Chapters 6.5 and 6.95, Division 20, of the California Health & Safety Code; (3)

1 enforcement of the Unfair Competition Law, Business & Professions Code section 17200 et seq.,
2 as it relates to protection of the environment and natural resources of the State of California; and
3 (4) other environmental actions that benefit the State and its citizens as determined by the
4 Attorney General. Such funding may be used for the costs of the Attorney General's
5 investigation, filing fees and other court costs, payment to expert witnesses and technical
6 consultants, purchase of equipment, laboratory analyses, personnel costs, travel costs, and other
7 costs necessary to pursue environmental actions investigated or initiated by the Attorney General
8 for the benefit of the State of California and its citizens. The payment, and any interest derived
9 therefrom, shall solely and exclusively augment the budget of the Attorney General's Office as it
10 pertains to the Environment Section of the Public Rights Division and in no manner shall
11 supplant or cause any reduction of any portion of the Attorney General's budget.

12 4.2. *Final Civil Penalties.* As a further incentive for earlier achievement of acrylamide
13 reduction, Settling Defendant shall pay an additional civil penalty ("Final Civil Penalty") to the
14 Attorney General pursuant to Health & Safety Code section 25249.12 of \$30,000 no later than the
15 Compliance Date, but if Settling Defendant has achieved the Target Level before the Compliance
16 Date for all Covered Products shipped for sale in California, such Final Civil Penalty shall be
17 waived. This payment, if made, shall be divided in accordance with Health & Safety Code
18 section 25249.12, subdivisions (c) and (d), with \$22,500 (75% of the penalty) to be deposited in
19 the Safe Drinking Water and Toxic Enforcement Fund, and \$7,500 (25% of the penalty) to be
20 paid to the Office of the Attorney General.

21 (a) The 75% share of the penalty to be deposited in the Safe Drinking Water and
22 Toxic Enforcement Fund shall be paid by check payable to the Office of Environmental Health
23 Hazard Assessment, with the check to bear the notation "Proposition 65 – AG Matter ID
24 OK2011950032."

25 (b) The 25% share of the penalty to be paid to the Office of the Attorney General shall
26 be paid by check payable to the "California Department of Justice – Litigation Deposit Fund."
27 The check shall bear on its face "Proposition 65 Recoveries Fund" and the Attorney General's
28 internal reference number for this matter (OK2011950032). The money paid to the Attorney

1 General's Office pursuant to this paragraph shall be administered by the California Department of
2 Justice and shall be used by the Environment Section of the Public Rights Division of the
3 Attorney General's Office, until all funds are exhausted, for any of the following purposes: (1)
4 implementation of the Attorney General's authority to protect the environment and natural
5 resources of the State pursuant to Government Code section 12600 et seq. and as Chief Law
6 Officer of the State of California pursuant to Article V, section 13 of the California Constitution;
7 (2) enforcement of laws related to environmental protection, including, but not limited to,
8 Chapters 6.5 and 6.95, Division 20, of the California Health & Safety Code; (3) enforcement of
9 the Unfair Competition Law, Business & Professions Code section 17200 et seq., as it relates to
10 protection of the environment and natural resources of the State of California; and (4) other
11 environmental actions that benefit the State and its citizens as determined by the Attorney
12 General. Such funding may be used for the costs of the Attorney General's investigation, filing
13 fees and other court costs, payment to expert witnesses and technical consultants, purchase of
14 equipment, laboratory analyses, personnel costs, travel costs, and other costs necessary to pursue
15 environmental actions investigated or initiated by the Attorney General for the benefit of the State
16 of California and its citizens. The payment, and any interest derived therefrom, shall solely and
17 exclusively augment the budget of the Attorney General's Office as it pertains to the Environment
18 Section of the Public Rights Division and in no manner shall supplant or cause any reduction of
19 any portion of the Attorney General's budget.

20 4.3. *Enforcement Fund Payment.* Within 30 days of the Effective Date, Settling
21 Defendant shall pay \$10,000 to be used by the Attorney General for the enforcement of
22 Proposition 65. This payment shall be made by check payable to the "California Department of
23 Justice." The check shall bear on its face "Proposition 65 Enforcement Fund" and the Attorney
24 General's internal reference number for this matter (OK2011950032). Funds paid pursuant to
25 this paragraph shall be placed in an interest-bearing Special Deposit Fund established by the
26 Attorney General. These funds, including any interest, shall be used by the Attorney General,
27 until all funds are exhausted, for the costs and expenses associated with the enforcement and
28 implementation of Proposition 65, including investigations, enforcement actions, and other

1 litigation or activities as determined by the Attorney General to be reasonably necessary to carry
2 out his duties and authority under Proposition 65. Such funding may be used for the costs of the
3 Attorney General's investigation, filing fees and other court costs, payment to expert witnesses
4 and technical consultants, purchase of equipment, travel, purchase of written materials, laboratory
5 testing, sample collection, or any other cost associated with the Attorney General's duties or
6 authority under Proposition 65. Funding placed in the Special Deposit Fund pursuant to this
7 paragraph, and any interest derived therefrom, shall solely and exclusively augment the budget of
8 the Attorney General's Office and in no manner shall supplant or cause any reduction of any
9 portion of the Attorney General's budget.

10 4.4. *Delivery.* The payments required by this Consent Judgment shall be made as
11 follows:

12 (a) All payments required by Paragraphs 4.1(a) and 4.2(a) shall be sent directly to:

13 Senior Accounting Officer – MS 19-B
14 Office of Environmental Health Hazard Assessment
15 P.O. Box 4010
16 Sacramento, CA 95812-0410

17 (b) All payments required by Paragraphs 4.1(b), 4.2(b), and 4.3 shall be made through
18 the delivery of separate checks to the attention of Laura J. Zuckerman, Deputy Attorney General,
19 California Department of Justice, 1515 Clay Street, 20th Floor, Oakland, CA 94612, with a copy
20 of the checks and cover letter to be sent to Robert Thomas, Legal Analyst, California Department
21 of Justice, 1515 Clay Street, 20th Floor, Oakland, CA 94612.

22 5. MODIFICATION OF CONSENT JUDGMENT

23 5.1. *Procedure for Modification.* Except as provided in Paragraph 1.5, this Consent
24 Judgment may be modified by written agreement of the Attorney General and Settling Defendant,
25 after noticed motion, and upon entry of a modified consent judgment by the Court thereon, or
26 upon motion of the Attorney General or Settling Defendant as provided herein or as otherwise
27 provided by law, and upon entry of a modified consent judgment by the Court. Before filing an
28 application with the Court for a modification to this Consent Judgment, Settling Defendant shall
meet and confer with the Attorney General to determine whether the Attorney General will

1 consent to the proposed modification. If a proposed modification is agreed upon, then Settling
2 Defendant and the Attorney General will present the modification to the Court by means of a
3 stipulated modification to the Consent Judgment. Otherwise, Settling Defendant shall bear the
4 burden of establishing that the modification is appropriate based on the occurrence of a condition
5 set forth in this Consent Judgment or as otherwise provided by law.

6 5.2 *Other Settlements.*

7 (a) If the Attorney General agrees in a settlement or judicially entered consent
8 judgment with another manufacturer of pellet-based popped potato crisps on terms, as drafted or
9 as implemented, that (i) are materially more beneficial to the defendant than those set forth in this
10 Consent Judgment as to the Compliance Date, or the form, manner or content of warning, or (ii)
11 allow pellet-based popped potato crisps with a designated Target Level higher than 490 ppb to be
12 shipped for sale and/or sold in California without a warning, this may provide grounds for
13 Settling Defendant to seek modification pursuant to Paragraph 5.1.

14 (b) If the Attorney General agrees in a settlement or judicially entered consent
15 judgment that pellet-based popped potato crisps do not require a warning under Proposition 65
16 (based on the presence of acrylamide), or if a court of competent jurisdiction renders a final
17 judgment, and the judgment becomes final, that pellet-based popped potato crisps (as sold by
18 other companies) do not require a warning for acrylamide under Proposition 65, then Settling
19 Defendant may seek, but is not automatically entitled to, a modification of this Consent Judgment
20 to eliminate its duties to warn and/or other duties related to the reduction of acrylamide levels as
21 to those products.

22 5.3. *Change in Proposition 65.* If Proposition 65 or its implementing regulations are
23 changed from their terms as they exist on the date of entry of this Consent Judgment, either Party
24 or both Parties may seek modification of the Consent Judgment through stipulated or noticed
25 motion as follows:

26 (a) If the change establishes that warnings for acrylamide in Covered Products are not
27 required, Settling Defendant may seek a modification of this Consent Judgment to eliminate its
28 duties to warn and/or its duty to reduce acrylamide levels.

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

4 (c) If the change would provide a new form, manner, or content for an optional or
5 safe-harbor warning, Settling Defendant shall meet and confer with the Attorney General and,
6 following agreement (if one is reached), jointly apply to the Court for approval of a plan for
7 implementing warnings in such manner. If no agreement is reached, Settling Defendant may seek
8 a modification of this Consent Judgment to provide a new form, manner, or content for an
9 optional or safe-harbor warning. In the absence of agreement between the Parties, it shall be
10 Settling Defendant's burden to establish that the proposed warning complies with any new safe
11 harbor method of providing warnings for food that is applicable to Covered Products, or that the
12 warning is provided in a manner that complies with the law and is at least as effective (i.e., is not
13 materially less informative or likely to be seen, read, and understood) as the forms of warning
14 otherwise required by this Consent Judgment.

15 5.4. *Correspondence with the Federal Government.* If Settling Defendant corresponds
16 in writing to an agency or branch of the United States Government in connection with the
17 application of Proposition 65 to acrylamide in food products, then so long as such correspondence
18 does not fall within one of the exemptions to the Freedom of Information Act, Settling Defendant
19 shall provide the Attorney General with a copy of such communication as soon as practicable, but
20 not more than 10 days after sending or receiving the correspondence; provided, however, that this
21 Paragraph shall not apply to correspondence solely to or from trade associations or other groups
22 of which Settling Defendant is a member, nor shall this Paragraph apply to the extent Settling
23 Defendant is no longer required to test for acrylamide under this Consent Judgment.

24 5.5. *Federal Preemption.* If a court of competent jurisdiction or an agency of the
25 federal government (including, but not limited to, the U.S. Food and Drug Administration) states,
26 through any regulation or legally binding act, that federal law has preemptive effect on any of the
27 requirements of this Consent Judgment, including, but not limited to precluding Settling
28 Defendant from providing any of the warnings set forth in this Consent Judgment or the manner

1 in which such warnings are given, then Settling Defendant may seek to modify this Consent
2 Judgment to bring it into compliance with or avoid conflict with federal law. The modification
3 shall not be granted unless this Court concludes, in a final judgment or order, that such
4 modification is necessary to bring this Consent Judgment into compliance with or avoid conflict
5 with federal law. Specifically, a determination that the provision of some, but not all, forms of
6 warning described in Paragraph 3 above is not permitted shall not relieve Settling Defendant of
7 the duty to provide one of the other warnings described under this judgment for which such
8 determination has not been made.

9 **6. ENFORCEMENT**

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

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

21 Each signatory to the Parties' stipulation for entry of this Consent Judgment has certified
22 that he or she is fully authorized by the Party he or she represents to stipulate to this Consent
23 Judgment, to enter into and execute the stipulation on behalf of the Party represented, and legally
24 to bind that Party.

25 **8. CLAIMS COVERED**

26 This Consent Judgment is a full, final, and binding resolution between the People and
27 Settling Defendant, of any alleged violation of Proposition 65 or its implementing regulations,
28 Business & Professions Code sections 17200 et seq., and any other statutory, regulatory or

1 common law duty or requirement, and fully and finally resolves all claims that have been or could
2 have been asserted in the Complaint against Settling Defendant, for failure to provide clear and
3 reasonable warnings of exposure to acrylamide from the consumption of the Covered Products, as
4 well as any other claim based on the facts or conduct alleged in the Complaint as to the Covered
5 Products, whether based on actions committed by Settling Defendant or by any entity to whom it
6 distributes or sells Covered Products, or any entity that sells the Covered Products to consumers
7 in the state of California. Compliance with the terms of this Consent Judgment resolves, as to
8 Covered Products, any issue or claim, now, in the past, and in the future, concerning compliance
9 by Settling Defendant, its parents, shareholders, divisions, subdivisions, subsidiaries, sister
10 companies, affiliates, franchisees, cooperative members, and licensees; and distributors,
11 wholesalers, and retailers who sell Covered Products; and the predecessors, successors, and
12 assigns of any of them (collectively, "Affiliates"), with the requirements of Proposition 65 and its
13 implementing regulations as to the duty to warn about acrylamide in Covered Products shipped
14 for sale in California, except that this sentence does not apply to, or resolve any claims against,
15 the following entities:

16 (a) distributors of Settling Defendant who, after the Effective Date, but prior to the
17 date the Covered Products achieve compliance with the Target Level, sell Covered Products in
18 California schools for students from kindergarten through grade 12; and

19 (b) retailers who, after the Compliance Date, do not post signs sent to them pursuant
20 to Paragraph 3.3(c) and (d).

21 It is the intent of the Parties that compliance with Paragraph 2.1 of this Consent Judgment
22 shall constitute compliance with Proposition 65. Moreover, it is the Parties' understanding that
23 the Environmental Law Foundation ("ELF") has represented that, if Settling Defendant enters
24 into this Consent Judgment, and the People file a motion with the Court for its entry, ELF shall
25 consider compliance with the Consent Judgment to be consistent with the requirements set forth
26 in Paragraphs 2 and 3.1 of its Consent Judgment in *Environmental Law Foundation v. Albertsons,*
27 *et al.* (Los Angeles Superior Court, Case No. BC 384665).

1 **9. RETENTION OF JURISDICTION**

2 This Court shall retain jurisdiction of this matter to implement and enforce this Consent
3 Judgment.

4 **10. PROVISION OF NOTICE**

5 10.1. When any Party is entitled to receive any notice under this Consent Judgment, the
6 notice shall be sent by overnight courier service to the person and address set forth in this
7 Paragraph. Any Party may modify the person and address to whom the notice is to be sent by
8 sending the other Party notice by certified mail, return receipt requested. Said change shall take
9 effect on the date the return receipt is signed by the Party receiving the change.

10 10.2. Notices shall be sent by First Class Mail and/or overnight delivery to the following
11 when required:

12 For the People/the Attorney General:

13 Laura J. Zuckerman
14 Timothy E. Sullivan
15 Deputy Attorneys General
16 1515 Clay Street, 20th Floor
17 Oakland, CA 94612

18 For Settling Defendant:

19 Michèle B. Corash, Esq.
20 Morrison & Foerster LLP
21 425 Market Street
22 San Francisco, CA 94105

23 **11. COURT APPROVAL**

24 This Consent Judgment shall be submitted to the Court for entry by noticed motion. If
25 this Consent Judgment is not approved by the Court, it shall be of no force or effect and may not
26 be used by the Attorney General or Settling Defendant for any purpose.

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 and understandings related hereto. No representations, oral or
otherwise, express or implied, other than those contained herein have been made by any Party

1 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
2 deemed to exist or to bind any of the Parties.

3 12.2. This Consent Judgment is the result of mutual drafting and no ambiguity
4 found herein shall be construed in favor of or against any Party.

5
6 IT IS SO ORDERED, ADJUDGED, AND DECREED:

7 Dated:

1/6/12



Judge of the Superior Court

HAROLD KAHN

Exhibit A

COVERED PRODUCTS

Group A. All flavors of pellet-based popped potato crisp products
manufactured by Settling Defendant, including but not limited to

Original
Barbeque
Sour Cream and Onion
Salt and Vinegar
Salt and Pepper
Cheddar
Parmesan Garlic
Jalapeño

Exhibit B

Popchips Workplan for Acrylamide Reduction

This Workplan lists specific steps Popchips must take (in addition to those undertakings listed in the Consent Judgment as to Defendant Popchips, Inc. ["Consent Judgment"]) in good faith to achieve the Target Level no later than the Compliance Date set forth in Section 2.1 of the Consent Judgment for all of its pellet-based popped potato crisps shipped for sale in California ("Popped Crisps").

1. Contracts with suppliers

- (a) **Growers** – No later than May 1, 2012, Popchips will contract directly with growers, setting specifications that secure adequate supply to our flakers of low-sugar, lower-asparagine potatoes from the crop to be used in the manufacture of flakes and pellets available to Popchips in 2012 ("2012 Crop"). These potatoes are hereinafter referred to as "Popchips Potatoes."
- (b) **Flakers** – Beginning with the 2012 Crop, Popchips will also contract, no later than August 1, 2012, directly with potato flakers, setting specifications to assure that they:
- Use only Popchips Potatoes to make the flakes sold to Popchips' pellet supplier ("Popchips Flakes").
 - Process Popchips Potatoes as soon as is feasible after arrival, to minimize the amount of time that the Popchips Potatoes are stored.
 - Improve quality control measures intended to minimize the presence of peels or other materials that could increase the sugar or asparagine content of the Popchips Flakes.
 - Test each batch of Popchips Flakes to make certain that they meet the specification for sugar content (no greater than 0.5% by weight) before shipping to Popchips' pellet suppliers.
- (c) **Pellet Suppliers** – Popchips will require its pellet supplier(s) to implement the following upgrades to the pellet-making process:
- For Popped Crisps manufactured from potatoes from crops available prior to the 2012 Crop, employ Novozyme or other similar asparaginase additive ("Enzymes") to reduce the levels of acrylamide in all pellets supplied to Popchips ("Popchips Pellets").
 - Install new or upgraded equipment necessary to facilitate the addition of Enzymes to Popchips Pellets.
 - Continue to review the process to discover and implement additional modifications to the process to reduce or moderate the presence of

1 Exhibit B (cont).

2 chemical precursors in Popchips Pellets that could increase formation of
3 acrylamide in Popped Crisps.

- 4 • Test sugar levels in each batch of Popchips Pellets to confirm they meet
5 existing specifications.
- 6 • Beginning with the 2012 Crop, in addition to employing the acrylamide
7 reduction measures listed above, use only Popchips Flakes to manufacture
8 Popchips Pellets.

9 **2. Additional Commitments by Popchips**

10 Popchips shall take the following additional measures to implement reductions required
11 under the Consent Judgment:

- 12 (a) Beginning December 1, 2011, Popchips will perform confirmation testing as
13 necessary to assure that the Popchips Pellets obtained from its pellet supplier(s)
14 satisfy the specification for sugar content. If testing reveals that Popchips Pellets
15 are outside of the specifications, Popchips will investigate the cause and take
16 measures to correct the exception.
- 17 (b) Popchips will continue to review its own processing procedures, including cooking
18 times and temperatures, equipment performance, and employee training, to assure
19 that acrylamide levels in Popped Crisps are reduced to achieve the Target Level no
20 later than the Compliance Date set forth in the Consent Judgment.

21 **3. Modification of Workplan**

22 In furtherance of the goal of complying with the Target Level on or before the
23 Compliance Date set forth in the Consent Judgment, the terms of this Workplan may be
24 modified as indicated below.

- 25 (a) **More effective reduction measures.** To the extent that Popchips identifies
26 alternatives to the measures set forth herein that it reasonably believes will be
27 more effective or will allow earlier compliance, Popchips will notify the People in
28 writing of the proposed modification. If Popchips does not receive an objection
within 10 days, it shall consider the terms of the Workplan so amended.
- (b) **Unforeseen circumstances.** If modification of the Workplan becomes necessary
due to other unforeseen circumstances, Popchips will meet and confer with the
Attorney General about such modification, and shall propose alternatives for
achieving the Target Level. If consent is received, the new terms shall be reduced
to writing and the Workplan shall be deemed so amended. If the parties are unable
to reach agreement concerning the proposed modification, Popchips may seek an
order of the Court modifying the Workplan through a noticed motion.

1 Exhibit C

2 **THIS COMMUNICATION APPLIES ONLY TO**
3 **DISTRIBUTORS WHO DISTRIBUTE POPCHIPS PRODUCTS IN CALIFORNIA**

4 Popchips, Inc. has entered into a consent judgment with the Attorney General for the State of
5 California regarding the presence of acrylamide in its pellet-based popped potato crisp products
6 sold in California.

7 Under the terms of this consent judgment, a copy of which is attached, Covered Products may not
8 be sold in California schools for students from kindergarten through grade 12 without the warning
9 required by Paragraph 3 unless the Covered Products have achieved the Target Level. Popchips,
10 Inc. requests that you ensure that you do not, directly or indirectly, distribute to or sell in any K-
12 school in California any Popchips products until you have been notified to the contrary in
writing by Popchips, Inc. In the consent judgment, Popchips, Inc. obtained a conditional release
on your behalf. For the release to continue to be effective after the date of this letter, you need to
comply with the directions in this communication.

11 Please sign and return the written acknowledgment below to acknowledge that you have received
12 this letter and you will comply with its directions until you receive written instruction from
Popchips, Inc. to the contrary.

13 Thank you for your cooperation. If you have any questions, please contact _____

14 Acknowledged by:

15 _____ (Signature)

16 _____ (Print Name)

17 _____ (Company)

18 _____ (Date)

Exhibit D

**THIS COMMUNICATION APPLIES ONLY TO
DISTRIBUTORS WHO DISTRIBUTE POPCHIPS PRODUCTS IN CALIFORNIA**

On [Date], Popchips, Inc. sent you a letter notifying you of the requirements of a consent judgment entered into between Popchips, Inc. and the Attorney General for the State of California regarding the presence of acrylamide in its pellet-based popped potato crisp products sold in California.

Under the terms of this consent judgment, a copy of which is attached again for your convenience, Covered Products may not be sold in California schools for students in kindergarten through grade 12 without the warning required by Paragraph 3 unless the Covered Products have achieved the Target Level. Popchips, Inc. requests that you ensure that you do not, directly or indirectly, distribute to or sell in any K-12 school in California any Popchips products until you have been notified to the contrary in writing by Popchips, Inc.

As stated in our prior letter, Popchips, Inc. obtained a conditional release in the consent judgment on your behalf. For the release to be effective after the date of the prior letter, you need to comply with the directions in this communication.

We have not received your written acknowledgment that you have received our prior letter and will comply with its directions. Please sign and return the written acknowledgement below to acknowledge that you have received this letter and you will comply with its directions until you receive written instruction from Popchips, Inc. to the contrary.

Thank you for your cooperation. If you have any questions, please contact

Acknowledged by:

(Signature)

(Print Name)

(Company)

(Date)

1 Exhibit E

2 (For use if Settling Defendant provides sign warnings pursuant to Paragraph 3.3)

3 **THIS COMMUNICATION APPLIES ONLY TO**
4 **RETAIL LOCATIONS IN CALIFORNIA**

5 Popchips, Inc. has entered into a consent judgment with the Attorney General for the State of
6 California regarding the presence of acrylamide in its pellet-based popped potato crisp products
sold by retailers at retail locations in California.

7 Under the terms of this consent judgment, Popchips, Inc. is providing the enclosed sign warnings
8 to retailers to be posted in retail stores selling any of the pellet-based popped potato crisp
9 products identified below in California. In the consent judgment, Popchips, Inc. obtained a
conditional release on your behalf. For the release to continue to be effective after the date of this
letter, you need to comply with the directions in this communication.

10 We request that you post these signs on your shelf(ves) or in your aisle(s) where the identified
11 products are sold. For stores less with than 7,500 square feet of retail space and no more than two
12 cash registers, the sign may be placed at each cash register instead of on the shelf(ves) or in the
aisle(s). Additionally, stores that operate a customer service desk or similar central facility must
also post a sign at that location.

13 Please sign and return the written acknowledgment below to acknowledge that you have received
14 the signs and that they will be posted in accordance with these specifications until you receive
written instruction from Popchips, Inc. to the contrary.

15 Thank you for your cooperation. If you need more signs or have any questions, such as the
16 appropriate sign locations for your specific retail store(s), please contact _____

17 Acknowledged by:

(Signature)

18 _____
(Print Name)

(Company/Store Location)

19 _____
(Date)

20 List of Products

1 Exhibit F

2 (For use if Settling Defendant provides sign warnings pursuant to Paragraph 3.3)

3 **THIS COMMUNICATION APPLIES ONLY TO**
4 **RETAIL LOCATIONS IN CALIFORNIA**

5 On [Date], Popchips, Inc. sent you a letter enclosing sign warnings for posting in your store(s) in
6 California pursuant to a consent judgment entered into between Popchips, Inc. and the Attorney
7 General for the State of California regarding the presence of acrylamide in its pellet-based popped
8 potato crisp products sold by retailers at retail locations in California.

9 These signs are to be posted on your shelf(ves) or in your aisle(s) where any of the pellet-based
10 popped potato crisp products identified below are sold in your stores in California. For stores
11 with less than 7,500 square feet of retail space and no more than two cash registers, the sign may
12 be placed at each cash register instead of on the shelf(ves) or in the aisle(s). Additionally, stores
13 that operate a customer service desk or similar central facility must also post a sign at that
14 location.

15 As stated in our prior letter, Popchips, Inc. obtained a conditional release in the consent judgment
16 on your behalf. For the release to be effective after the date of the prior letter, you need to
17 comply with the directions in this communication.

18 We have not received your written acknowledgment that you have received the signs and that
19 your store(s) will post these signs. Please sign and return the written acknowledgement below to
20 acknowledge that you have received the signs and that they will be posted in accordance with
21 these specifications until you receive written instruction from Popchips, Inc. to the contrary.

22 Thank you for your cooperation. If you need more signs or have any questions, such as the
23 appropriate sign locations for your specific retail store(s), please contact

24 Acknowledged by:

25 _____ (Signature)
26 _____ (Print Name)
27 _____ (Company/Store Location)
28 _____ (Date)

List of Products

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