



1           1.4     “Effective Date” means the date on which notice of entry of this Consent  
2 Judgment is by the Court is served upon Settling Defendant.

3           **2.     INTRODUCTION**

4           2.1     The Parties to this Consent Judgment are the Center For Environmental Health  
5 (“CEH”), a California non-profit corporation, and Reser’s Fine Foods, Inc. (“Settling  
6 Defendant”). CEH and Settling Defendant (the “Parties”) enter into this Consent Judgment to  
7 settle certain claims asserted by CEH against Settling Defendant as set forth in Complaint.

8           2.2     On October 28, 2016, CEH provided a 60-day Notice of Violation of Proposition  
9 65 to the California Attorney General, to the District Attorneys of every county in California, to  
10 the City Attorneys of every California city with a population greater than 750,000, and to Settling  
11 Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons to  
12 acrylamide when using Covered Products under the provided directions for use, without first  
13 providing a clear and reasonable Proposition 65 warning.

14           2.3     Settling Defendant is a corporation or other business entity that manufactures,  
15 distributes, sells, or offers for sale Covered Products that are sold in the State of California or has  
16 done so in the past.

17           2.4     On March 2, 2017, CEH filed the original complaint in the above-captioned  
18 matter, naming Settling Defendant as a defendant in the action. On April 6, 2017, CEH filed the  
19 operative Complaint.

20           2.5     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           2.6     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 **3. INJUNCTIVE RELIEF**

9 3.1 **Reformulation of Covered Products.** As of the Compliance Date, Settling  
10 Defendant shall not purchase, manufacture, ship, sell, or offer for sale any Covered Product that  
11 will be sold or offered for sale in California that exceed the following acrylamide concentration  
12 limits (the “Reformulation Levels”), such concentration to be determined by use of a test  
13 performed by an accredited laboratory using either GC/MS (Gas Chromatograph/Mass  
14 Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry) or any other testing  
15 method agreed upon by the Parties:

16 3.1.1 The average acrylamide concentration of Covered Products as used per  
17 cooking instructions, shall not exceed, on average, 350 parts per billion (“ppb”) by weight (the  
18 “Average Level”). The Average Level is determined by randomly selecting and testing at least 1  
19 sample each from 5 different lots of a particular type of Covered Product (or the maximum  
20 number of lots available for testing if less than 5) during a testing period of at least 60 days.

21 3.1.2 The acrylamide concentration of any individual unit, as used per cooking  
22 instructions, shall not exceed 500 ppb by weight (the “Unit Level”), based on a representative  
23 composite sample taken from the individual unit being tested.

24 3.2 **Compliance Testing.** Compliance with the Reformulation Levels shall be  
25 determined after cooking each Covered Product as if prepared for consumption in accordance  
26 with the instructions on the packaging label of that Covered Product.

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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 meet and confer requirement  
6 of Section 4.2.4, if applicable.

7             4.2     **Enforcement of Reformulation Commitment.**

8                     4.2.1     Notice of Violation. In the event that CEH identifies a Covered Product  
9 that was sold or offered for sale to California consumers with a best-by or sell-by (or equivalent)  
10 date or other code that reflects that the Covered Products were manufactured on or after the  
11 Compliance Date, and for which CEH has laboratory test results showing that the Covered  
12 Product, as prepared for consumption in accordance with the instructions on the packaging label  
13 of that Covered Product, has an acrylamide level exceeding the Unit Level, then CEH may issue a  
14 Notice of Violation pursuant to this Section.

15                     4.2.2     Service of Notice of Violation and Supporting Documentation.

16                             4.2.2.1     The Notice of Violation shall be sent to the person(s) identified in  
17 Section 8.2 to receive notices for Settling Defendant, and must be served within sixty (60) days of  
18 the later of the date the Covered Product at issue was purchased or otherwise acquired by CEH or  
19 the date that CEH can reasonably determine that the Covered Product at issue was manufactured,  
20 shipped, sold, or offered for sale by Settling Defendant, provided, however, that CEH may have  
21 up to an additional sixty (60) days to send the Notice of Violation if, notwithstanding CEH's  
22 good faith efforts, the test data required by Section 4.2.2.2 below cannot be obtained by CEH  
23 from its laboratory before expiration of the initial sixty (60) day period.

24                             4.2.2.2     The Notice of Violation shall, at a minimum, set forth: (a) the date  
25 the Covered Product was purchased; (b) a description of the Covered Product giving rise to the  
26 alleged violation, including the name and address of the retail entity from which the sample was  
27 obtained and if available information that identifies the product lot; and (c) all test data obtained

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1 by CEH regarding the Covered Product and supporting documentation sufficient for validation of  
2 the test results, including any laboratory reports, quality assurance reports, and quality control  
3 reports associated with testing of the Covered Product.

4 4.2.3 Notice of Election of Response. No more than forty-five (45) days after  
5 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to  
6 CEH whether it elects to contest the allegations contained in a Notice of Violation (“Notice of  
7 Election”). Failure to provide a Notice of Election within forty-five (45) days of effectuation of  
8 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.

9 4.2.3.1 If a Notice of Violation is contested, the Notice of Election shall  
10 include all then-available documentary evidence regarding the alleged violation, including all  
11 available test data. If Settling Defendant or CEH later acquires additional test or other data  
12 regarding the alleged violation, it shall notify the other party and promptly provide all such data  
13 or information to the party.

14 4.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and Settling  
15 Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of  
16 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw  
17 the original Notice of Election contesting the violation and serve a new Notice of Election to not  
18 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay  
19 \$2,500 in addition to any payment required under this Consent Judgment. At any time, CEH may  
20 withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the result shall be  
21 as if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of  
22 Violation results within thirty (30) days of a Notice of Election to contest, CEH may file an  
23 enforcement motion or application pursuant to Section 4.1. In any such proceeding, CEH may  
24 seek whatever fines, costs, penalties, attorneys’ fees, or other remedies are provided by law for  
25 failure to comply with the Consent Judgment.

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1                   4.2.5     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                   4.2.5.1     Settling Defendant shall include in its Notice of Election a detailed  
5 description with supporting documentation of the corrective action(s) that it has undertaken or  
6 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,  
7 provide reasonable assurance that all Covered Products having the same lot number as that of the  
8 Covered Product identified in CEH’s Notice of Violation (the “Noticed Covered Product”) will  
9 not be thereafter sold or offered for sale to California consumers. Settling Defendant shall make  
10 available to CEH for inspection and copying records any correspondence regarding the market  
11 withdrawal and destruction of the Noticed Covered Products to the extent it has such documents  
12 on file . If there is a dispute over the corrective action, Settling Defendant and CEH shall meet  
13 and confer before seeking any remedy in court. In no case shall CEH issue more than one Notice  
14 of Violation per manufacturing lot of a type of Covered Product. In no case shall CEH issue  
15 more than one Notice of Violation per manufacturing lot of a type of Covered Product, nor shall  
16 CEH issue more than two Notices of Violation in the first calendar year following the Effective  
17 Date.

18                   4.2.5.2     If the Notice of Violation is the first, second, third, or fourth Notice  
19 of Violation received by Settling Defendant under Section 4.2.1 that was not successfully  
20 contested or withdrawn, then Settling Defendant shall pay \$15,000 for each Notice of Violation.  
21 If Settling Defendant has received more than four (4) Notices of Violation under Section 4.2.1  
22 that were not successfully contested or withdrawn, then Settling Defendant shall pay \$25,000 for  
23 each Notice of Violation. If Settling Defendant produces with its Notice of Election test data for  
24 the Covered Product that: (i) was conducted prior to the date CEH purchased the Covered  
25 Product that is the subject of the Notice of Violation; (ii) was conducted on the same type of  
26 Covered Product; and (iii) demonstrates acrylamide levels below the Unit Level, then any  
27 payment under this Section shall be reduced by 100 percent (100%) for the first Notice of  
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1 Violation, by seventy-five percent (75%) for the second Notice of Violation, and by fifty percent  
2 (50%) for any subsequent Notice of Violation. In no case shall Settling Defendant be obligated  
3 to pay more than \$100,000 for uncontested Notices of Violation in any calendar year irrespective  
4 of the total number of Notices of Violation issued.

5 4.2.6 Payments. Any payments under Section 4.2 shall be made by check  
6 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a  
7 Notice of Election triggering a payment and which shall be used as reimbursement for costs for  
8 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse  
9 attorneys’ fees and costs incurred in connection with these activities, and shall be the extent of all  
10 monetary remedies available to CEH under this Consent Judgment for a non-contested Notice of  
11 Violation.

12 4.3 **Repeat Violations.** If Settling Defendant has received four (4) or more Notices of  
13 Violation concerning the same type of Covered Product that were not successfully contested or  
14 withdrawn in any two (2) year period then, at CEH’s option, CEH may seek whatever fines,  
15 costs, penalties, attorneys’ fees, or other remedies that are provided by law for failure to comply  
16 with the Consent Judgment. Prior to seeking such relief, CEH shall meet and confer with Settling  
17 Defendant for at least thirty (30) days to determine if Settling Defendant and CEH can agree on  
18 measures that Settling Defendant can undertake to prevent future violations.

19 **5. PAYMENTS**

20 5.1 **Payments by Settling Defendant.** Within ten (10) calendar days of the Effective  
21 Date, Settling Defendant shall pay the total sum of \$75,000 as a settlement payment as further set  
22 forth in this Section.

23 5.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall  
24 be paid in five (5) separate checks in the amounts specified below and delivered as set forth  
25 below. Any failure by Settling Defendant to comply with the payment terms herein shall be  
26 subject to a stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each  
27 day the full payment is not received after the applicable payment due date set forth in Section 5.1.

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1 The late fees required under this Section shall be recoverable, together with reasonable attorneys'  
2 fees, in an enforcement proceeding brought pursuant to Section 4.1 of this Consent Judgment.

3 The funds paid by Settling Defendant shall be allocated as set forth below between the following  
4 categories and made payable as follows:

5 5.2.1 \$10,000 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).

6 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §  
7 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health  
8 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty  
9 payment for \$7,500 shall be made payable to OEHHA and associated with taxpayer identification  
10 number 68-0284486. This payment shall be delivered as follows:

11 For United States Postal Service Delivery:  
12 Attn: Mike Gyurics  
13 Fiscal Operations Branch Chief  
14 Office of Environmental Health Hazard Assessment  
P.O. Box 4010, MS #19B  
Sacramento, CA 95812-4010

15 For Non-United States Postal Service Delivery:  
16 Attn: Mike Gyurics  
17 Fiscal Operations Branch Chief  
18 Office of Environmental Health Hazard Assessment  
1001 I Street, MS #19B  
Sacramento, CA 95814

19 The CEH portion of the civil penalty payment for \$2,500 shall be made payable to  
20 the Center For Environmental Health and associated with taxpayer identification number 94-  
21 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San  
22 Francisco, CA 94117.

23 5.2.2 \$7,500 as an Additional Settlement Payment ("ASP") to CEH pursuant to  
24 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH  
25 intends to restrict use of the ASPs received from the Consent Judgment before the Court to the  
26 following purposes: the funds will be placed in CEH's Toxics in Food Fund and used to support  
27 CEH programs and activities that seek to educate the public about acrylamide and other toxic

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

11                   5.2.3     \$57,500 as a reimbursement of a portion of CEH’s reasonable attorneys’  
12 fees and costs. The attorneys’ fees and cost reimbursement shall be made in two separate checks  
13 as follows: (a) \$48,665 payable to the Lexington Law Group and associated with taxpayer  
14 identification number 94-3317175; and (b) \$8,835 payable to the Center For Environmental  
15 Health and associated with taxpayer identification number 94-3251981. These payments shall be  
16 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

17 **6.     MODIFICATION AND DISPUTE RESOLUTION**

18           6.1     **Modification.** This Consent Judgment may be modified from time to time by  
19 express written agreement of the Parties, with the approval of the Court and prior notice to the  
20 Attorney General’s Office, or by an order of this Court upon motion and prior notice to the  
21 Attorney General’s Office and in accordance with law.

22           6.2     **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
23 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to  
24 modify the Consent Judgment.

25 **7.     CLAIMS COVERED AND RELEASE**

26           7.1     This Consent Judgment is a full, final, and binding resolution between CEH on  
27 behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries,

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1 affiliated entities that are under common ownership, directors, officers, employees, agents,  
2 shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to  
3 which Settling Defendant directly or indirectly distributes or sells Covered Products, including  
4 but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and  
5 licensees, including but not limited to Save Mart Supermarkets (“Downstream Defendant  
6 Releasees”), of any violation of Proposition 65 based on failure to warn about alleged exposure to  
7 acrylamide contained in Covered Products that were sold, distributed, or offered for sale by  
8 Settling Defendant prior to the Compliance Date.

9       7.2     CEH, for itself, its agents, successors, and assigns, releases, waives, and forever  
10 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream  
11 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or  
12 common law claims that have been or could have been asserted by CEH individually or in the  
13 public interest regarding the failure to warn about exposure to acrylamide arising in connection  
14 with Covered Products manufactured, distributed, or sold by Settling Defendant prior to the  
15 Compliance Date.

16       7.3     Compliance with the terms of this Consent Judgment by Settling Defendant and  
17 Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant,  
18 Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure to  
19 warn about acrylamide in Covered Products manufactured, distributed, or sold by Settling  
20 Defendant after the Compliance Date.

21     **8.     PROVISION OF NOTICE**

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

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

28       8.2     When Settling Defendant is entitled to receive any notice under this Consent

1 Judgment, the notice shall be sent by first class and electronic mail to:

2 Craig M. Nicholas  
3 Nicholas & Tomasevic LLP  
4 225 Broadway, 19<sup>th</sup> Floor  
5 San Diego, CA 92101  
6 craig@nicholaslaw.org

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

9 **9. COURT APPROVAL**

10 9.1 This Consent Judgment shall become effective upon the date signed by CEH and  
11 Settling Defendant, whichever is later, provided, however, that CEH shall prepare and file a  
12 Motion for Approval of this Consent Judgment and Settling Defendant shall support approval of  
13 such Motion.

14 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or  
15 effect and shall not be introduced into evidence or otherwise used in any proceeding for any  
16 purpose.

17 **10. GOVERNING LAW AND CONSTRUCTION**

18 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
19 California.

20 **11. ATTORNEYS' FEES**

21 11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
22 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs..

23 11.2 Nothing in this Section 11 shall preclude a party from seeking an award of  
24 sanctions pursuant to law.

25 **12. ENTIRE AGREEMENT**

26 12.1 This Consent Judgment contains the sole and entire agreement and understanding  
27 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
28 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
and therein. There are no warranties, representations, or other agreements between the Parties

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

11 **13. RETENTION OF JURISDICTION**

12 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
13 Consent Judgment.

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

15 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
16 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
17 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

19 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
20 against any entity other than Settling Defendant on terms that are different than those contained  
21 in this Consent Judgment.


22 **16. EXECUTION IN COUNTERPARTS**

23 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
24 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
25 constitute one document.

26 **IT IS SO STIPULATED:**


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Dated: <u>19 JAN</u> , 2018	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>   _____ Signature  <u>Charles Pizzano</u> _____ Printed Name  <u>ASSOCIATE DIRECTOR</u> _____ Title
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Dated: _____, 2018	<b>RESER'S FINE FOODS, INC.</b>  _____ Signature  _____ Printed Name  _____ Title
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Dated: _____, 2018	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>  _____ Signature  _____ Printed Name  _____ Title
Dated: <u>1/22</u> , 2018	<b>RESER'S FINE FOODS, INC.</b>   _____ Signature  <u>Carl Leary</u> _____ Printed Name  <u>C. FO / Treasurer</u> _____ Title

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

Dated: \_\_\_\_\_

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Judge of the Superior Court

**EXHIBIT A**

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<b><u>Item Number</u></b>	<b><u>Item Description</u></b>
70038.62568	POTATOES DICED BEST CHOICE 6/20z
70038.62569	POTATOES HASHBROWN BEST CHOICE 6/20z
71117.14315	POTATOES SEASONED HASHBROWN 6/20z
71117.14320	POTATOES DICED RETAIL 6/20z
71117.14423	POTATOES HASHBROWN RESER 6/20z
71117.14432	ZZ) POTATOES DCD RSR CAD 6/567g
71117.14434	POTATOES HASHBROWN CANADA 6/20z
71117.14501	ZZ) POTATOES 7/8" LRG DCD 4/5#
71117.61484	BKD POTATO TRI COLOR RSTD SALT PEPPER MSB 6/2/20z