

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

CENTER FOR ENVIRONMENTAL HEALTH,)	Case No. RG 17- 852777
)	
Plaintiff,)	[PROPOSED] CONSENT JUDGMENT
)	AS TO CLIFFSTAR LLC AND
v.)	CLIFFSTAR CALIFORNIA LLC
)	
MRS. GOOCH'S NATURAL FOOD)	
MARKETS, 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 prune juice. An initial list of the Covered Products is attached hereto as Exhibit A.

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

1 **2. INTRODUCTION**

2 2.1 The Parties to this Consent Judgment are the Center for Environmental Health, a
3 California non-profit corporation (“CEH”) and Cliffstar LLC and Cliffstar California LLC
4 (“Settling Defendants”). CEH and Settling Defendants (the “Parties”) enter into this Consent
5 Judgment to settle certain claims asserted by CEH against Settling Defendants as set forth in the
6 Complaint.

7 2.2 On or about November 9, 2016, CEH provided a 60-day Notice of Violation of
8 Proposition 65 to the California Attorney General, the District Attorneys of every county in
9 California, the City Attorneys of every California city with a population greater than 750,000,
10 and to Settling Defendants and WinCo Foods, LLC (“WinCo”), alleging that Settling Defendants
11 and WinCo violated Proposition 65 by exposing persons in California to acrylamide contained in
12 Covered Products without first providing a clear and reasonable Proposition 65 warning (the
13 “Notice”).

14 On or about October 28, 2016, CEH also provided a 60-day Notice of Violation of
15 Proposition 65 to the California Attorney General, the District Attorneys of every county in
16 California, the City Attorneys of every California city with a population greater than 750,000, and
17 to Wal-Mart Stores, Inc. (“Wal-Mart”), alleging that Wal-Mart violated Proposition 65 by exposing
18 persons in California to acrylamide contained in the Great Value brand of Covered Products
19 without first providing a clear and reasonable Proposition 65 warning (the “Wal-Mart Notice”). As
20 the Settling Defendants manufacture the Great Value brand of Covered Products, provided those
21 Covered Products to Wal-Mart, and wish to address the potential application of Proposition 65 to
22 them hereunder, the Notice and the Wal-Mart Notice shall collectively be referred to herein as “the
23 Notices.”

24 2.3 Each Settling Defendant is a corporation or other business entity that
25 manufactures, distributes, sells, or offers for sale Covered Products that are sold in the State of
26 California or has done so at times relevant to the Complaint.

27 2.4 On March 13, 2017, CEH filed the Complaint in the above-captioned matter. On
28

1 or about December 20, 2017, CEH filed an amendment to the Complaint pursuant to Cal. Civ.
2 Pro. § 474, naming Settling Defendants as defendants.

3 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
4 has jurisdiction over the allegations of violations contained in the Complaint and personal
5 jurisdiction over each Settling Defendant as to the acts alleged in the Complaint, that venue is
6 proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce this
7 Consent Judgment as a full and final resolution of all claims which were or could have been
8 raised in the Complaint based on the facts alleged therein and in the Notices with respect to
9 Covered Products manufactured, distributed, and/or sold by Settling Defendants.

10 2.6 Nothing in this Consent Judgment is or shall be construed as an admission against
11 interest by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall
12 compliance with the Consent Judgment constitute or be construed as an admission against interest
13 by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this
14 Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the
15 Parties may have in any other pending or future legal proceedings. This Consent Judgment is the
16 product of negotiation and compromise and is accepted by the Parties solely for purposes of
17 settling, compromising, and resolving issues disputed in this action.

18 **3. INJUNCTIVE RELIEF**

19 3.1 **Reformulation of Covered Products.** Commencing on the Effective Date,
20 Settling Defendants shall not purchase, manufacture, ship, sell, or offer for sale any Covered
21 Product that will be sold or offered for sale in California that contains a concentration of more
22 than the following parts per billion (“ppb”) levels of acrylamide by weight as measured at the
23 point at which the Covered Product is decanted by the Settling Defendants into bottles or other
24 containers to be offered for sale to California consumers (the “Reformulation Level”):

- 25 a. For 100% Single Strength Covered Products (Not Made from Concentrate): 250 ppb;
26 b. For Covered Products Made in Part from Single Strength and in Part from Concentrate:
27 200 ppb; and

28

1 c. For Covered Products Made only from Concentrate: 150 ppb
2 The acrylamide concentration shall be determined by use of a test performed by an accredited
3 laboratory using either GC/MS (Gas Chromatograph/Mass Spectrometry), LC-MS/MS (Liquid
4 Chromatograph-Mass Spectrometry), or any other testing method agreed upon by the Parties.

5 3.2 **Technology Licensing.** The requirements in this Consent Judgment are not
6 contingent upon the use of any particular method to achieve the Reformulation Level. The
7 Settling Defendants also represent and warrant that they do not employ any patented technology
8 that will be used to meet the Reformulation Level.

9 **4. ENFORCEMENT**

10 4.1 **General Enforcement Provisions.** CEH may, by motion or application for an
11 order to show cause before this Court, enforce the terms and conditions contained in this Consent
12 Judgment. Any action to enforce alleged violations of Section 3.1 by a Settling Defendant shall
13 be brought exclusively pursuant to this Section 4, and be subject to the meet and confer
14 requirement of Section 4.2.4 if applicable.

15 4.2 **Enforcement of Reformulation Commitment.**

16 4.2.1 Notice of Violation. In the event that CEH purchases a Covered Product
17 in California that was sold or offered for sale by a Settling Defendant with a best-by or sell-by (or
18 equivalent) date more than one year after the Effective Date, and for which CEH has laboratory
19 test results showing that the Covered Product exceeds the Reformulation Level, CEH may issue a
20 Notice of Violation pursuant to this Section.

21 4.2.2 Service of Notice of Violation and Supporting Documentation.

22 4.2.2.1 The Notice of Violation shall be sent to the person(s) identified in
23 Section 8.2 to receive notices for Settling Defendants, and must be served within sixty (60) days
24 of the later of the date the Covered Product at issue was purchased or otherwise acquired by CEH
25 or the date that CEH can reasonably determine that the Covered Product at issue was
26 manufactured, shipped, sold, or offered for sale by a Settling Defendant, provided, however, that
27 CEH may have up to an additional sixty (60) days to send the Notice of Violation if,
28

1 notwithstanding CEH's good faith efforts, the test data required by Section 4.2.2.2 below cannot
2 be obtained by CEH from its laboratory before expiration of the initial sixty (60) day period.

3 4.2.2.2 The Notice of Violation shall, at a minimum, set forth: (a) the date
4 the Covered Product was purchased; (b) the location at which the Covered Product was
5 purchased; (c) a description of the Covered Product giving rise to the alleged violation, including
6 its name, size, the name and address of the retail entity from which the sample was obtained, and
7 pictures of the product packaging from all sides, which identifies the product lot (by means of its
8 best-by or sell-by (or equivalent) date or otherwise); and (d) all test data obtained by CEH
9 regarding the Covered Product and supporting documentation sufficient for validation of the test
10 results, including any laboratory reports, quality assurance reports, and quality control reports
11 associated with testing of the Covered Product.

12 4.2.3 Notice of Election of Response. No more than thirty (30) days after
13 effectuation of service of a Notice of Violation, Settling Defendants shall provide written notice
14 to CEH whether they elect to contest the allegations contained in a Notice of Violation ("Notice
15 of Election"). Failure to provide a Notice of Election within thirty (30) days of effectuation of
16 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.
17 Upon notice to CEH, Settling Defendants may have up to an additional sixty (60) days to elect if,
18 notwithstanding Settling Defendants' good faith efforts, Settling Defendants are unable to verify
19 the test data provided by CEH before expiration of the initial thirty (30) day period.

20 4.2.3.1 If a Notice of Violation is contested, the Notice of Election shall
21 include all documents upon which Settling Defendants are relying to contest the alleged violation,
22 including all available test data on the Covered Product in question, including test data reflective
23 of the level of acrylamide measured in the Covered Product at the point at which it was decanted
24 by the Settling Defendant into bottles or other containers to be offered for sale to California
25 consumers. If a Settling Defendant or CEH later acquires additional test or other data regarding
26 the alleged violation during the meet and confer period described in Section 4.2.4, it shall notify
27
28

1 the other Party and promptly provide all such data or information to the Party unless either the
2 Notice of Violation or Notice of Election has been withdrawn.

3 4.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and Settling
4 Defendants shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of
5 serving a Notice of Election contesting a Notice of Violation, Settling Defendants may withdraw
6 the original Notice of Election contesting the violation and serve a new Notice of Election to not
7 contest the violation, provided, however, that, in this circumstance, Settling Defendants shall pay
8 \$2,500 in addition to any other payment required under this Consent Judgment. At any time,
9 CEH may withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the
10 result shall be as if CEH never issued any such Notice of Violation. If no informal resolution of a
11 Notice of Violation results within thirty (30) days of a Notice of Election to contest, CEH may
12 agree to provide additional time to further meet and confer on the matter which is the subject of
13 the Notice of Violation or it may file an enforcement motion or application pursuant to Section
14 4.1. In any such proceeding, CEH may seek whatever fines, costs, penalties, attorneys' fees, or
15 other remedies are provided by law for an alleged failure to comply with the Consent Judgment.

16 4.2.5 Non-Contested Notices. If Settling Defendants elect to not contest the
17 allegations in a Notice of Violation, they shall undertake corrective action(s) and make payments,
18 if any, as set forth below.

19 4.2.5.1 Settling Defendants shall include in their Notice of Election test
20 data reflective of the level of acrylamide measured in the Covered Product that is the subject of
21 the Notice of Violation at the point at which it was decanted by the Settling Defendants into
22 bottles or other containers to be offered for sale to California consumers. If that data reflects
23 testing of the Covered Product in the same calendar quarter that corresponds to the best-by or
24 sell-by (or equivalent) date shown on the cap or label of the Covered Product which is the subject
25 of the Notice of Violation and the results of that testing show that the Reformulation Level of the
26 Covered Product has not been exceeded at the point of bottling, then any exceedance of the
27 Reformulation Level shall be deemed to be attributable to acrylamide formation arising during
28

1 shelf life (i.e., after the point of the final bottling and pasteurization of the Covered Product). If
2 test data from the point of bottling shows that the Reformulation Level of the Covered Product
3 has been exceeded at the point of bottling, then Settling Defendants may alternatively establish
4 through contemporaneous records that the exceedance resulted from additional holding, heating,
5 and/or pasteurization of the applicable Covered Product due to decanting and bottling equipment
6 being taken off-line for unscheduled maintenance (an “Upset”). In order to avail itself of this
7 provision, Settling Defendants must provide CEH with contemporaneous records that show: (a)
8 when the Upset occurred and its causes; (b) that the facility was being operating properly at the
9 time of the Upset; and (c) that remedial measures were taken to prevent a recurrence of the Upset.

10 4.2.5.2 In the absence of making a showing under Section 4.2.5.1 above,
11 Settling Defendants shall include in their Notice of Election a detailed description with
12 supporting documentation of the corrective action(s) that they have undertaken or propose to
13 undertake to address the alleged violation. Any such correction shall, at a minimum, provide
14 reasonable assurance that all Covered Products having the same lot number as that of the Covered
15 Product identified in CEH’s Notice of Violation (the “Noticed Covered Products”) will not be
16 thereafter sold in California or offered for sale to California customers by Settling Defendants,
17 and that Settling Defendants have sent instructions to any retailers or customers that offer the
18 Noticed Covered Products for sale to either (a) cease offering the Noticed Covered Products for
19 sale to California consumers and to destroy or return all such Noticed Covered Products to
20 Settling Defendants, or (b) to sticker the Noticed Covered Products with adhesive labels
21 containing the following statement: “**WARNING:** Consuming this product can expose you to
22 chemicals including acrylamide, which are known to the State of California to cause cancer. For
23 more information go to www.P65Warnings.ca.gov/food.” The preceding warning must be set off
24 from other surrounding information, enclosed in a box, and the word “**WARNING**” must be in
25 all capital letters and bold print. The warning statement must be in a type size no smaller than the
26 largest type size used for other consumer information (as that term is defined in 27 Cal. Code
27 Regs. § 25600.1(c)) on the Noticed Covered Products, and in no case smaller than 6 point font.

28

1 Settling Defendants shall keep for a period of one year and make available to CEH upon
2 reasonable notice (which shall not exceed more than one request per year) for inspection and
3 copying records of any correspondence regarding the foregoing. If there is a dispute over the
4 corrective action, Settling Defendants and CEH shall meet and confer before seeking any remedy
5 in court.

6 4.2.5.3 In no case shall CEH issue more than one Notice of Violation per
7 manufacturing lot of a type of Covered Product, nor shall CEH issue more than two Notices of
8 Violation in the first year following the Effective Date.

9 4.2.5.4 If the Notice of Violation received by Settling Defendants under
10 Section 4.2.1 was addressed by Section 4.2.5.1, then Settling Defendants shall pay \$2,500 for
11 each Notice of Violation. If the Notice of Violation is the first, second, third, or fourth Notice of
12 Violation received by Settling Defendants under Section 4.2.1 that was not successfully
13 contested, addressed by Section 4.2.5.1, or otherwise withdrawn, then Settling Defendants shall
14 pay \$15,000 for each Notice of Violation. If Settling Defendants have received more than four
15 (4) Notices of Violation under Section 4.2.1 that were not successfully contested, addressed by
16 Section 4.2.5.1, or otherwise withdrawn, then Settling Defendants shall pay \$25,000 for each
17 Notice of Violation. In no case shall Settling Defendants be obligated to pay more than \$75,000
18 for all Notices of Violation not successfully contested or withdrawn in any calendar year
19 irrespective of the total number of Notices of Violation issued.

20 4.2.6 Payments. Any payments under Section 4.2 shall be made by check
21 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a
22 Notice of Election triggering a payment and shall be used as reimbursement for costs for
23 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse
24 attorneys’ fees and costs incurred in connection with these activities.

25 4.3 **Repeat Violations.** If Settling Defendants have received more than four (4)
26 Notices of Violation concerning the same type of Covered Product that were not successfully
27 contested, addressed by Section 4.2.5.1, or otherwise withdrawn in any two (2) year period then,
28

1 at CEH’s option, CEH may seek whatever fines, costs, penalties, attorneys’ fees, or other
2 remedies that are provided by law for failure to comply with the Consent Judgment. Prior to
3 seeking such relief, CEH shall meet and confer with Settling Defendants for at least thirty (30)
4 days to determine if Settling Defendants and CEH can agree on measures that Settling
5 Defendants can undertake to prevent future alleged violations.

6 **5. PAYMENTS**

7 5.1 **Payments by Settling Defendants.** Within ten (10) calendar days of the Effective
8 Date, Settling Defendants shall pay the total sum of \$90,000 as a settlement payment as further
9 set forth in this Section.

10 5.2 **Allocation of Payments.** The total settlement amount shall be paid in five (5)
11 separate checks in the amounts specified below and delivered as set forth below. Any failure by
12 Settling Defendants to comply with the payment terms herein shall be subject to a stipulated late
13 fee to be paid by Settling Defendants to CEH in the amount of \$100 for each day the full payment
14 is not received after the payment due date set forth in Section 5.1. The late fees required under
15 this Section shall be recoverable, together with reasonable attorneys’ fees, in an enforcement
16 proceeding brought pursuant to Section 4 of this Consent Judgment. The funds paid by Settling
17 Defendants shall be allocated as set forth below between the following categories and made
18 payable as follows:

19 5.2.1 \$12,060 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).
20 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §
21 25249.12 (25% to CEH and 75% to the State of California’s Office of Environmental Health
22 Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty
23 payment for \$9,045 shall be made payable to OEHHA and associated with taxpayer identification
24 number 68-0284486. This payment shall be delivered as follows:
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

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

The CEH portion of the civil penalty payment for \$3,015 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.2 \$9,040 as an Additional Settlement Payment (“ASP”) to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH intends to restrict use of the ASPs received from this Consent Judgment to the following purposes: the funds will be placed in CEH’s Toxics in Food Fund and used to support CEH programs and activities that seek to educate the public about acrylamide and other toxic chemicals in food, to work with the food industry and agriculture interests to reduce exposure to acrylamide and other toxic chemicals in food, and to thereby reduce the public health impacts and risks of exposure to acrylamide and other toxic chemicals in food sold in California. CEH shall obtain and maintain adequate records to document that ASPs are spent on these activities and CEH agrees to provide such documentation to the Attorney General within thirty (30) days of any request from the Attorney General. The payment pursuant to this Section shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

1 5.2.3 \$68,900 as a reimbursement of a portion of CEH’s reasonable attorneys’
2 fees and costs. The attorneys’ fees and cost reimbursement shall be made in two separate checks
3 as follows: (a) \$58,265 payable to the Lexington Law Group and associated with taxpayer
4 identification number 94-3317175; and (b) \$10,635 payable to the Center for Environmental
5 Health and associated with taxpayer identification number 94-3251981. These payments shall be
6 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

7 **6. MODIFICATION AND DISPUTE RESOLUTION**

8 6.1 **Modification.** This Consent Judgment may be modified from time to time by
9 express written agreement of the Parties, with the approval of the Court, or by an order of this
10 Court upon motion and in accordance with law.

11 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
12 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to
13 modify the Consent Judgment.

14 6.3 **Other Settlements.** CEH intends to enter into agreements with other entities that
15 manufacture, distribute and/or sell Covered Products. Should Settling Defendants determine that
16 the Reformulation Levels set forth in any such Consent Judgment are less stringent than those set
17 forth in Section 3.1, after meeting and conferring with CEH pursuant to Section 6.2 above,
18 Settling Defendants may move for a modification of this Consent Judgment to substitute those
19 less stringent Reformulation Levels, and CEH agrees not to oppose any such motion except for
20 good cause shown.

21 6.4 In the event that achievement of the Reformulation Levels set forth herein does
22 not reduce levels of other chemicals to levels which do not require a warning under Proposition
23 65 (including after accounting for any effect of sections 25703, 25803, and 25501 of Title 27 of
24 the California Code of Regulations), as an alternative to having to encounter a new enforcement
25 action initiated under section 25249.7(d) of the California Health and Safety Code, Settling
26 Defendants may elect to meet and confer with CEH pursuant to Section 6.2 above concerning
27
28

1 pursuing a potential modification of this Consent Judgment pursuant to Section 6.1 to have it
2 address such other chemicals.

3 **7. CLAIMS COVERED AND RELEASE**

4 7.1 This Consent Judgment is a full, final and binding resolution between CEH on
5 behalf of itself and the public interest and each Settling Defendant and its parents, subsidiaries,
6 affiliated entities that are under common ownership, directors, officers, employees, agents,
7 shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to
8 which each Settling Defendant directly or indirectly distributes or sells Covered Products,
9 including but not limited to distributors, wholesalers, customers, retailers (including, but not
10 limited to, Wal-Mart and its corporate affiliates and WinCo and its corporate affiliates),
11 franchisees, licensors, and licensees (“Downstream Defendant Releasees”), of any violation of
12 Proposition 65 based on failure to warn about alleged exposure to acrylamide contained in
13 Covered Products that were sold, distributed, or offered for sale by a Settling Defendant prior to
14 the Effective Date.

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

22 7.3 Compliance with the terms of this Consent Judgment by Settling Defendants shall
23 constitute compliance with Proposition 65 by Settling Defendants, Defendant Releasees and
24 Downstream Defendant Releasees with respect to any alleged failure to warn about acrylamide in
25 Covered Products manufactured, distributed, or sold by Settling Defendants after the Effective
26 Date.

27
28

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 Defendants are entitled to receive any notice under this Consent
10 Judgment, the notice shall be sent by first class and electronic mail to:

11 Robert L. Falk
12 Morrison Foerster LLP
13 425 Market Street, 32ND Floor
14 San Francisco, CA 94105-2482
15 RFalk@mof.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 as a contract between the Parties
20 upon the date signed by CEH and Settling Defendants, whichever is later, provided however, that
21 (a) CEH shall prepare and file a Motion for Approval of this Consent Judgment and Settling
22 Defendants shall support entry of this Consent Judgment by the Court, and (b) if this Consent
23 Judgment is not entered by the Court, it shall be of no force or effect and shall not be introduced
24 into evidence or otherwise used in any proceeding for any purpose other than to allow the Court
25 to determine if there was a material breach of this 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.

11. TERMINATION

11.1 This Consent Judgment shall be terminable by CEH or by Settling Defendant
at any time after January 31, 2023, upon the provision of 30 days advanced written notice; such

1 termination shall be effective upon the subsequent filing of a notice of termination with Superior
2 Court of Alameda County.

3 11.2 Should this Consent Judgment be terminated pursuant to this Section, it shall
4 be of no further force or effect; provided, however that if CEH is the terminating Party, the
5 provisions of Sections 5, 7, and 10.1 shall survive any termination and provided further that if a
6 Settling Defendant is the terminating Party, the provisions of Sections 5, 7.1, and 10.1 shall
7 survive any termination.

8 **12. ATTORNEYS' FEES**

9 12.1 A Party who unsuccessfully brings or contests an action, motion, or application
10 arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable
11 attorneys' fees and costs.

12 12.2 Nothing in this Section 12 shall preclude a party from seeking an award of
13 sanctions pursuant to law.

14 **13. ENTIRE AGREEMENT**

15 13.1 This Consent Judgment contains the sole and entire agreement and understanding
16 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
17 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
18 and therein. There are no warranties, representations, or other agreements between the Parties
19 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
20 other than those specifically referred to in this Consent Judgment have been made by any Party
21 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
22 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
23 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
24 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
25 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
26 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
27 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof

28

1 whether or not similar, nor shall such waiver constitute a continuing waiver.

2 **14. RETENTION OF JURISDICTION**

3 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
4 Consent Judgment.

5 **15. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

6 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
7 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
8 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

9 **16. NO EFFECT ON OTHER SETTLEMENTS**

10 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
11 against an entity other than Settling Defendants on terms that are different than those contained in
12 this Consent Judgment.

13 **17. EXECUTION IN COUNTERPARTS**

14 17.1 The stipulations to this Consent Judgment may be executed in counterparts and by
15 means of facsimile or portable document format (pdf), which taken together shall be deemed to
16 constitute one document.

17

18 **IT IS SO ORDERED, ADJUDGED,**

19 **AND DECREED**

20 Dated: _____
21 _____
22 Judge of the Superior Court

23

24

25

26


27

28

29

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO STIPULATED:

Dated: <u>21 Dec</u> , 2017	CENTER FOR ENVIRONMENTAL HEALTH  _____ Signature <u>Carroll P. Puzos</u> _____ Printed Name <u>Associate Director</u> _____ Title
Dated: _____, 2017	CLIFFSTAR LLC _____ Signature _____ Printed Name _____ Title
Dated: _____, 2017	CLIFFSTAR CALIFORNIA LLC _____ Signature _____ Printed Name _____ Title

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO STIPULATED:



Dated: _____, 2017	CENTER FOR ENVIRONMENTAL HEALTH _____ Signature _____ Printed Name _____ Title
Dated: <u>Dec. 18</u> , 2017	CLIFFSTAR LLC  _____ Signature Marni Morgan Poe _____ Printed Name Vice President, General Counsel and Secretary _____ Title
Dated: <u>Dec. 18</u> , 2017	CLIFFSTAR CALIFORNIA LLC  _____ Signature Marni Morgan Poe _____ Printed Name Vice President, General Counsel and Secretary _____ Title

EXHIBIT A

Great Value Prune Juice (Single Strength)

Great Value Light Prune Cocktail

Winco Foods Prune Juice (from Concentrate)

Food Club Prune Juice (Single Strength)

Kroger Prune Juice (Single Strength)

Parent's Choice Apple Prune Juice (from Concentrate)

Raley's Prune Juice (Single Strength)

Signature Kitchens Prune Juice (Single Strength)

Springfield Prune Juice (Single Strength)

Stater Bros. Prune Juice (Single Strength)

Sunny Select Prune Juice (from Concentrate)

Western Family Prune Juice (from Concentrate)