

1 (“CEH”), a California non-profit corporation, and Bell-Carter Foods, LLC (“Settling
2 Defendant”). CEH and Settling Defendant (the “Parties”) enter into this Consent Judgment to
3 settle certain claims asserted by CEH against Settling Defendant as set forth in the Complaint.

4 2.2 On or about November 29, 2016, CEH provided a 60-day Notice of Violation of
5 Proposition 65 to the California Attorney General, to the District Attorneys of every county in
6 California, to the City Attorneys of every California city with a population greater than 750,000,
7 and to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing
8 persons in California to acrylamide contained in Covered Products without first providing a clear
9 and reasonable Proposition 65 warning (the “Notice”).

10 2.3 Settling Defendant is a corporation or other business entity that employs ten or
11 more people and manufactures, distributes, sells, or offers for sale Covered Products that are sold
12 in the State of California or has done so in the past.

13 2.4 On June 8, 2017, CEH filed the Complaint in the above-captioned matter, naming
14 Settling Defendant as a defendant.

15 2.5 Settling Defendant has committed substantial resources to attempt to reduce the
16 acrylamide levels in the Covered Products, including but not limited to employee time
17 researching, developing, and testing acrylamide reduction efforts, capital expenditures on process
18 and equipment changes, and money spent retaining independent contractors or funding university
19 research to assist in Settling Defendant’s endeavors. Among other efforts, Settling Defendant
20 undertook a 2.5-year long research and development study analyzing the potential formation of
21 acrylamide in California-style black ripe olives. Settling Defendant assessed methods for
22 preventing and reducing the potential formation of acrylamide in California-style black ripe
23 olives at every step in the production process, including storage, preparation, and thermal
24 sterilization.

25 2.6 For purposes of this Consent Judgment only, the Parties stipulate that this Court
26 has jurisdiction over the allegations of violations contained in the Complaint and personal
27 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper

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1 in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent
2 Judgment as a full and final resolution of all claims which were or could have been raised in the
3 Complaint based on the facts alleged therein and in the Notice with respect to Covered Products
4 manufactured, distributed, and/or sold by Settling Defendant.

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

13 3. INJUNCTIVE RELIEF

14 3.1 **Reduction of Acrylamide to Lowest Level Feasible.** After the Effective Date,
15 for any of its Covered Products that are offered for sale in California, Settling Defendant shall
16 utilize quality control measures that reduce the formation of acrylamide to the lowest level
17 currently feasible, consistent with 27 C.C.R. § 25506. These steps include:

18 3.1.1 Conducting an initial water wash of all Covered Products after brine
19 storage and before any lye treatments take place, so as to reduce acrylamide precursors from
20 unprocessed California-style black ripe olives prior to processing.

21 3.1.2 Conducting a final water wash prior to canning and sterilizing all Covered
22 Products, so as to reduce acrylamide precursors that may be formed by the oxidization of
23 California-style black ripe olives during processing.

24 3.2 **Further Acrylamide Reduction Efforts.** After the Effective Date, Settling
25 Defendant shall continue to monitor research on acrylamide and to further refine its production
26 processes if it determines there are commercially-available and commercially-feasible
27 technologies or processes that could further reduce acrylamide formation in its Covered Products
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1 without change to the U.S. Department of Agriculture’s standard of identity and without material
2 reduction in nutritional benefit or palatability to consumers from the Covered Products.

3 **3.3 Reporting.** One year after the Effective Date (and every year thereafter for four
4 additional reports), Settling Defendant shall provide a written report to CEH regarding any efforts
5 it has taken or the research it has considered during the intervening period to reduce the formation
6 of acrylamide in the Covered Products to the lowest level currently feasible.

7 **4. ENFORCEMENT**

8 **4.1 General Enforcement Provisions.** CEH may, by motion, application for an order
9 to show cause, or action filed in this Court, enforce the terms and conditions contained in this
10 Consent Judgment. Any action to enforce alleged violations of Sections 3.1 or 3.2 by Settling
11 Defendant shall be brought exclusively pursuant to Section 4.2. This Consent Judgment may
12 only be enforced by the Parties.

13 **4.2 Enforcement of Acrylamide Reduction Commitment.**

14 4.2.1 In the event that CEH identifies any commercially-available and
15 commercially-feasible acrylamide reduction measures not already implemented or evaluated by
16 Settling Defendant that CEH believes in good faith could yield material reductions in acrylamide
17 levels in Covered Products (without changing the standard of identity or materially reducing
18 nutritional benefit or palatability to consumers), CEH shall send Settling Defendant a detailed
19 description of such measures, including any supporting documentation regarding the feasibility
20 and effectiveness of such measures for products similar to the Covered Products. These materials
21 shall be sent to the person(s) identified in Section 8.2 to receive notices for Settling Defendant.
22 Settling Defendant shall use reasonable commercial efforts to test or evaluate such measures to
23 consider their use and effect, and shall advise CEH of its findings and conclusion within 180
24 days. No compensation shall be recoverable by either party if Settling Defendant implements
25 such reduction measures without the need for motion practice or other related court filings.

26 4.2.2 In the event that CEH reasonably believes that Settling Defendant has not
27 acted in good faith in performing such tests and evaluating outcomes, and has subsequently acted

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1 in an unreasonable manner in electing not to implement such acrylamide reduction measures,
2 CEH may elect to file a motion, application, or action in this Court to enforce the terms and
3 conditions contained in this Consent Judgment. Prior to filing such motion, application, or
4 action, the Parties shall meet and confer in a good faith attempt to resolve the dispute informally.

5 4.2.3 In any motion, application, or action to enforce the Consent Judgment,
6 CEH may seek whatever fines, costs, penalties, attorneys' fees, or other remedies are provided by
7 law for an alleged failure to comply with the Consent Judgment. Nothing in this Section 4.2.3
8 shall impact the Court's authority in an enforcement proceeding to impose appropriate remedies,
9 including the provision of a clear and reasonable warning. In any enforcement proceeding
10 regarding this Consent Judgment, Settling Defendant may assert any and all defenses that are
11 available.

12 **5. PAYMENTS**

13 5.1 **Payments by Settling Defendant.** Within ten (10) calendar days of the Effective
14 Date, Settling Defendant shall pay the total sum of \$150,000 as a settlement payment as further
15 set forth in this Section.

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

25 5.2.1 \$20,286 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).
26 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §
27 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
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1 Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty
2 payment for \$15,214.50 shall be made payable to OEHHA and associated with taxpayer
3 identification number 68-0284486. This payment shall be delivered as follows:

4 For United States Postal Service Delivery:

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

10 For Non-United States Postal Service Delivery:

11 Attn: Mike Gyurics
12 Fiscal Operations Branch Chief
13 Office of Environmental Health Hazard Assessment
14 1001 I Street, MS #19B
15 Sacramento, CA 95814

16 The CEH portion of the civil penalty payment for \$5,071.50 shall be made payable to the Center
17 for Environmental Health and associated with taxpayer identification number 94-3251981. This
18 payment shall be delivered to Lexington Law Group, LLP, 503 Divisadero Street, San Francisco,
19 CA 94117.

20 5.2.2 \$15,214 as an Additional Settlement Payment (“ASP”) to CEH pursuant to
21 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH
22 intends to restrict use of the ASPs received from this Consent Judgment to the following
23 purposes: the funds will be placed in CEH’s Toxics in Food Fund and used to support CEH
24 programs and activities that seek to educate the public about acrylamide and other toxic
25 chemicals in food, to work with the food industry and agriculture interests to reduce exposure to
26 acrylamide and other toxic chemicals in food, and to thereby reduce the public health impacts and
27 risks of exposure to acrylamide and other toxic chemicals in food sold in California. CEH shall
28 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-

1 3251981. This payment shall be delivered to Lexington Law Group, LLP, 503 Divisadero Street,
2 San Francisco, CA 94117.

3 5.2.3 \$114,500 as a reimbursement of a portion of CEH's reasonable attorneys'
4 fees and costs (including but not limited to expert and investigative costs). The attorneys' fees
5 and cost reimbursement shall be made in two separate checks as follows: (a) \$102,805 payable to
6 the Lexington Law Group, LLP and associated with taxpayer identification number 88-4399775;
7 and (b) \$11,695 payable to the Center for Environmental Health and associated with taxpayer
8 identification number 94-3251981. These payments shall be delivered to Lexington Law Group,
9 LLP, 503 Divisadero Street, San Francisco, CA 94117.

10 **6. MODIFICATION AND DISPUTE RESOLUTION**

11 6.1 **Procedure for Modification.** This Consent Judgment may be modified from time
12 to time by (1) express written agreement of the Parties, or (2) as provided in this Section 6. Any
13 modification to the Consent Judgment requires the approval of the Court and prior notice to the
14 Attorney General's Office. As applicable, any Party seeking to modify this Consent Judgment
15 must notify the other Party in writing, and the Party receiving such notification shall not object
16 nor oppose the modification except for good cause shown, and in such event the Parties shall
17 thereafter attempt in good faith to meet and confer with the other Party prior to filing a motion to
18 modify the Consent Judgment. If the Parties are unable to resolve their dispute informally within
19 sixty (60) days after the date of the written notification, the Party that issued the written
20 notification to seek the modification may bring a motion or proceeding to seek judicial relief as to
21 the requested modification.

22 6.2 **Other CEH Settlements.** CEH has or may in the future enter into consent
23 judgments with other entities that manufacture, distribute, and/or sell California-style black ripe
24 olives. Should Settling Defendant determine that the injunctive relief set forth in any such
25 consent judgment is less stringent (*e.g.*, permits higher acrylamide levels) than that standard set
26 forth herein, it shall meet and confer with CEH. Thereafter, Settling Defendant may move for a
27 modification of this Consent Judgment to substitute that less stringent injunctive relief standard,
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1 and CEH agrees not to oppose any such motion except for good cause shown.

2 **6.3 Court Decision Regarding California-Style Black Ripe Olives.** If a court of
3 competent jurisdiction renders a final judgment that one or more California-style black ripe olive
4 products do not require a warning for acrylamide under Proposition 65, where such products
5 contain levels of acrylamide at or above comparable acrylamide levels typically found in Settling
6 Defendant’s Covered Products, then Settling Defendant may move to modify this Consent
7 Judgment to conform to such ruling, and CEH agrees not to oppose any such motion except for
8 good cause shown.

9 **6.4 Other Court Decisions.** If a final decision of a court determines that warnings for
10 acrylamide exposures or that enforcement of Proposition 65 claims/warnings for acrylamide
11 exposures are preempted, violate the First Amendment, or otherwise are unlawful or
12 unconstitutional with respect to dietary consumption of acrylamide, then Settling Defendant shall
13 meet and confer with CEH about modifications to this Consent Judgment. Settling Defendant
14 may thereafter move to modify this Consent Judgment to conform to such ruling, including
15 potential invalidation of the injunctive terms herein. CEH agrees not to oppose any such motion
16 except for good cause shown. CEH further agrees that it would not have good cause to oppose
17 modification if a final judgment on the merits is entered in *California Chamber of Commerce v.*
18 *Bonta*, 2:19-cv-DJC-JDP (E.D. Cal.), holding that all acrylamide Proposition 65 dietary
19 consumption warnings for cancer violate the First Amendment.

20 **6.5 Change in Proposition 65.** If Proposition 65 or its implementing regulations
21 (including but not limited to the “safe harbor no significant risk level” for acrylamide set forth at
22 Cal. Code Regs., tit. 27, section 25705, subdivision (c)(2) or any “alternative risk level” adopted
23 by regulation or court decision) are changed from their terms as they exist on the date of entry of
24 this Consent Judgment in a manner that impacts the injunctive relief in this Consent Judgment, or
25 if OEHHA takes some other final regulatory action for products similar to the Covered Product in
26 a manner that impacts the injunctive relief in this Consent Judgment or that determines that
27 warnings for acrylamide are not required for such products, then Settling Defendant may seek to
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1 modify this Consent Judgment.

2 6.6 **Scientific Studies.** If an agency of the federal government, including, but not
3 limited to the U.S. Food and Drug Administration, states through any guidance, regulation, or
4 other legally binding act, following a review of scientific studies and following public notice and
5 comment, a cancer potency estimate for acrylamide that equates to a no significant risk level
6 higher than 0.2 micrograms per day, then Settling Defendant shall be entitled to seek a
7 modification of this Consent Judgment to be relieved of its obligations to meet any requirements
8 of this Consent Judgment that are inconsistent with such a change.

9 6.7 **Federal Agency Action and Preemption.** If a court of competent jurisdiction or
10 an agency of the federal government, including, but not limited to the U.S. Food and Drug
11 Administration, states through any guidance, regulation, or other legally binding act that federal
12 law has preemptive effect on any of the requirements of this Consent Judgment, then this Consent
13 Judgment may be modified in accordance with the procedure for noticed motions set forth in
14 Section 6.1 to bring it into compliance with or avoid conflict with federal law. Any such
15 modification shall be limited to those changes that are necessary to bring this Consent Judgment
16 into compliance with or avoid conflict with federal law.

17 **7. CLAIMS COVERED AND RELEASE**

18 7.1 Provided that Settling Defendant complies in full with its obligations under
19 Section 5 hereof, this Consent Judgment is a full, final, and binding resolution between CEH on
20 behalf of itself and the public interest and Settling Defendant and Settling Defendant’s parents,
21 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
22 agents, shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities
23 to which Settling Defendant directly or indirectly distributes or sells Covered Products, including
24 but not limited to all distributors, wholesalers, customers, retailers, including, but not limited to,
25 Safeway, Inc., Smart & Final Stores, Inc., Smart & Final Stores LLC, and Amerifoods Trading
26 Company LLC, franchisees, licensors, and licensees (“Downstream Defendant Releasees”), of
27 any violation of Proposition 65 based on failure to warn about alleged exposure to acrylamide

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1 contained in Covered Products that were manufactured, purchased, or offered for sale by Settling
2 Defendant prior to the Effective Date.

3 7.2 Provided that Settling Defendant complies in full with its obligations under
4 Section 5 hereof, CEH, for itself, its agents, successors, and assigns, releases, waives, and forever
5 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream
6 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
7 common law claims that have been or could have been asserted by CEH regarding the failure to
8 warn about exposure to acrylamide arising in connection with Covered Products manufactured,
9 purchased, or offered for sale by Settling Defendant prior to the Effective Date.

10 7.3 Provided that Settling Defendant complies in full with its obligations under
11 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant
12 shall constitute compliance with Proposition 65 by Settling Defendant, its Defendant Releasees,
13 and its Downstream Defendant Releasees with respect to any alleged failure to warn about
14 acrylamide in Covered Products manufactured, purchased, or offered for sale by Settling
15 Defendant after the Effective Date.

16 **8. PROVISION OF NOTICE**

17 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
18 notice shall be sent by first class and electronic mail to:

19 Joseph Mann
20 Lexington Law Group, LLP
21 503 Divisadero Street
22 San Francisco, CA 94117
23 jmann@lexlawgroup.com

24 8.2 When Settling Defendant is entitled to receive any notice under this Consent
25 Judgment, the notice shall be sent by first class and electronic mail to:
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Trenton H. Norris
Hogan Lovells US LLP
4 Embarcadero Center, Suite 3500
San Francisco, CA 94111
trent.norris@hoganlovells.com

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

9. COURT APPROVAL

9.1 This Consent Judgment shall become effective upon the date signed by CEH and Settling Defendant, whichever is later; provided, however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall use reasonable and good faith efforts, to the extent necessary, to support entry of this Consent Judgment by the Court (including providing requested evidence in the form of a detailed declaration regarding its efforts to reduce acrylamide in Covered Products to date and other feasibility issues).

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

9.3 Within ten (10) days of receiving the initial payments required by Section 5.1, CEH shall dismiss all other defendants besides Settling Defendant that are named in this action without prejudice, and those defendants shall waive all costs in this action.

10. GOVERNING LAW AND CONSTRUCTION

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

11. ATTORNEYS' FEES

11.1 Should CEH prevail on any motion, application, or action to enforce a violation of the Consent Judgment, CEH shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such motion, application, or action. Should Settling Defendant prevail on such dispute, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result of

1 such motion, application, or action upon a finding by the Court that CEH’s prosecution of the
2 motion, application, or action lacked substantial justification. For purposes of the Consent
3 Judgment, the term “substantial justification” shall carry the same meaning as used in the Civil
4 Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

5 11.2 Except as otherwise provided in this Consent Judgment, each Party shall bear its
6 own attorneys’ fees and costs.

7 11.3 Nothing in this Section 11 shall preclude a Party from seeking an award of
8 sanctions pursuant to law.

9 **12. ENTIRE AGREEMENT**

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

24 **13. RETENTION OF JURISDICTION**

25 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
26 Consent Judgment. Notwithstanding the provisions of Section 6, nothing in this Consent
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1 Judgment limits or affects the Court's authority to modify this Consent Judgment as provided by
2 law.

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

4 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
5 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
6 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

7 **15. APPLICATION OF CONSENT JUDGMENT**

8 15.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
9 Defendant, and their respective divisions, subdivisions, and subsidiaries, and the successors or
10 assigns of any of them.

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

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

15 **17. COMPLIANCE WITH REPORTING REQUIREMENTS**

16 17.1 CEH agrees to comply with the reporting form requirements referenced in Health
17 and Safety Code section 25249.7(f).

18 **18. EXECUTION IN COUNTERPARTS**

19 18.1 The stipulations to this Consent Judgment may be executed in counterparts and by
20 means of facsimile or portable document format (pdf), which taken together shall be deemed to
21 constitute one document.

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23 **IT IS SO ORDERED, ADJUDGED,**

24 **AND DECREED**

25 Dated: _____

Judge of the Superior Court


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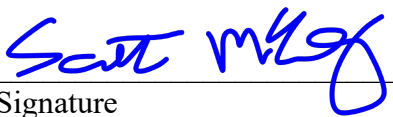
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IT IS SO STIPULATED:

Dated: <u>November 30, 2023</u>	CENTER FOR ENVIRONMENTAL HEALTH  _____ Signature <u>Kizzy Charles-Guzman</u> _____ Printed Name <u>CEO</u> _____ Title
Dated: _____, 2023	BELL-CARTER FOODS, LLC _____ Signature _____ Printed Name _____ Title

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IT IS SO STIPULATED:

Dated: _____, 2023	CENTER FOR ENVIRONMENTAL HEALTH _____ Signature _____ Printed Name _____ Title
Dated: <u>November 21</u> , 2023	BELL-CARTER FOODS, LLC  _____ Signature <u>Scott McCoy</u> _____ Printed Name <u>Vice President, Olive Division</u> _____ Title