

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.**

9 **4.1.1** Any action to enforce alleged violations of Sections 3.1 or 3.2 by Settling
10 Defendant shall be brought exclusively pursuant to Section 4.2.

11 **4.1.2** CEH may, by motion, application for an order to show cause, or action
12 filed in this Court, enforce the terms and conditions contained in this Consent Judgment. With
13 the exception of CEH, no other private citizen who seeks to enforce Proposition 65 on behalf of
14 the public interest, pursuant to Health & Safety Code section 25249.7(d), may enforce the terms
15 and conditions contained in this Consent Judgment.

16 **4.1.3** In the event that any public entity identified in Health & Safety Code
17 section 25249.7(c) (“Public Enforcers”) seeks to enforce the terms and conditions in this Consent
18 Judgment in the future, and the Court allows such enforcement, then such Public Enforcers shall
19 be subject to all terms and conditions specified in this Section 4, to the same extent such terms
20 and conditions apply to CEH. CEH and any Public Enforcers that the Court ultimately authorizes
21 to enforce the Consent Judgment are hereafter referred to as “Authorized Enforcer(s).”

22 **4.2 Enforcement of Acrylamide Reduction Commitment.**

23 **4.2.1** In the event that any Authorized Enforcer(s) identify commercially-
24 available and commercially-feasible acrylamide reduction measures not already implemented or
25 evaluated by Settling Defendant that Authorized Enforcer(s) believe in good faith could yield
26 material reductions in acrylamide levels in Covered Products (without changing the standard of
27 identity or materially reducing nutritional benefit or palatability to consumers), such Authorized
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1 Enforcer(s) shall send Settling Defendant a detailed description of such measures, including any
2 supporting documentation regarding the feasibility and effectiveness of such measures for
3 products similar to the Covered Products. These materials shall be sent to the person(s) identified
4 in Section 8.2 to receive notices for Settling Defendant. Settling Defendant shall use reasonable
5 commercial efforts to test or evaluate such measures to consider their use and effect, and shall
6 advise such Authorized Enforcer(s) of its findings and conclusion within 180 days. No
7 compensation shall be recoverable by either party if Settling Defendant implements such
8 reduction measures without the need for motion practice or other related court filings.

9 4.2.2 In the event that such Authorized Enforcer(s) reasonably believe that
10 Settling Defendant has not acted in good faith in performing such tests and evaluating outcomes,
11 and has subsequently acted in an unreasonable manner in electing not to implement such
12 acrylamide reduction measures, such Authorized Enforcer(s) may elect to file a motion,
13 application, or action in this Court to enforce the terms and conditions contained in this Consent
14 Judgment. Prior to filing such motion, application, or action, the Settling Defendant and such
15 Authorized Enforcer(s) shall meet and confer in a good faith attempt to resolve the dispute
16 informally.

17 4.2.3 In any motion, application, or action to enforce the Consent Judgment,
18 Authorized Enforcer(s) may seek whatever fines, costs, penalties, attorneys' fees, or other
19 remedies are provided by law for an alleged failure to comply with the Consent Judgment.
20 Nothing in this Section 4.2.3 shall impact the Court's authority in an enforcement proceeding to
21 impose appropriate remedies, including the provision of a clear and reasonable warning. In any
22 enforcement proceeding regarding this Consent Judgment, Settling Defendant may assert any and
23 all defenses that are available.

24 **5. PAYMENTS**

25 5.1 **Payments by Settling Defendant.** Within ten (10) calendar days of the Effective
26 Date, Settling Defendant shall pay the total sum of \$150,000 as a settlement payment as further
27 set forth in this Section.

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1 **5.2 Allocation of Payments.** The total settlement amount shall be paid in five (5)
2 separate checks in the amounts specified below and delivered as set forth below. Any failure by
3 Settling Defendant to comply with the payment terms herein shall be subject to a stipulated late
4 fee to be paid by Settling Defendant to CEH in the amount of \$100 for each day the full payment
5 is not received after the payment due date set forth in Section 5.1. The late fees required under
6 this Section shall be recoverable, together with reasonable attorneys' fees, in an enforcement
7 proceeding brought pursuant to Section 4 of this Consent Judgment. The funds paid by Settling
8 Defendant shall be allocated as set forth below between the following categories and made
9 payable as follows:

10 5.2.1 \$20,286 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).
11 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §
12 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
13 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
14 payment for \$15,214.50 shall be made payable to OEHHA and associated with taxpayer
15 identification number 68-0284486. This payment shall be delivered as follows:

16 For United States Postal Service Delivery:

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

22 For Non-United States Postal Service Delivery:

23 Attn: Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 1001 I Street, MS #19B
27 Sacramento, CA 95814

28 The CEH portion of the civil penalty payment for \$5,071.50 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, LLP, 503 Divisadero Street, San Francisco,
CA 94117.

1 5.2.2 \$15,214 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. This payment shall be delivered to Lexington Law Group, LLP, 503 Divisadero Street,
14 San Francisco, CA 94117.

15 5.2.3 \$114,500 as a reimbursement of a portion of CEH’s reasonable attorneys’
16 fees and costs (including but not limited to expert and investigative costs). The attorneys’ fees
17 and cost reimbursement shall be made in two separate checks as follows: (a) \$102,805 payable to
18 the Lexington Law Group, LLP and associated with taxpayer identification number 88-4399775;
19 and (b) \$11,695 payable to the Center for Environmental Health and associated with taxpayer
20 identification number 94-3251981. These payments shall be delivered to Lexington Law Group,
21 LLP, 503 Divisadero Street, San Francisco, CA 94117.

22 **6. MODIFICATION AND DISPUTE RESOLUTION**

23 6.1 **Procedure for Modification.** This Consent Judgment may be modified from time
24 to time by (1) express written agreement of the Parties, or (2) as provided in this Section 6. Any
25 modification to the Consent Judgment requires the approval of the Court and prior notice to the
26 Attorney General’s Office. As applicable, any Party seeking to modify this Consent Judgment
27 must notify the other Party in writing, and the Party receiving such notification shall not object
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1 nor oppose the modification except for good cause shown, and in such event the Parties shall
2 thereafter attempt in good faith to meet and confer with the other Party prior to filing a motion to
3 modify the Consent Judgment. If the Parties are unable to resolve their dispute informally within
4 sixty (60) days after the date of the written notification, the Party that issued the written
5 notification to seek the modification may bring a motion or proceeding to seek judicial relief as to
6 the requested modification.

7 **6.2 Other CEH Settlements.** CEH has or may in the future enter into consent
8 judgments with other entities that manufacture, distribute, and/or sell California-style black ripe
9 olives. Should Settling Defendant determine that the injunctive relief set forth in any such
10 consent judgment is less stringent (*e.g.*, permits higher acrylamide levels) than that standard set
11 forth herein, it shall meet and confer with CEH. Thereafter, Settling Defendant may move for a
12 modification of this Consent Judgment to substitute that less stringent injunctive relief standard,
13 and CEH agrees not to oppose any such motion except for good cause shown.

14 **6.3 Court Decision Regarding California-Style Black Ripe Olives.** If a court of
15 competent jurisdiction renders a final judgment that one or more California-style black ripe olive
16 products do not require a warning for acrylamide under Proposition 65, where such products
17 contain levels of acrylamide at or above comparable acrylamide levels typically found in Settling
18 Defendant's Covered Products, then Settling Defendant may move to modify this Consent
19 Judgment to conform to such ruling, and CEH agrees not to oppose any such motion except for
20 good cause shown.

21 **6.4 Other Court Decisions.** If a final decision of a court determines that warnings for
22 acrylamide exposures or that enforcement of Proposition 65 claims/warnings for acrylamide
23 exposures are preempted, violate the First Amendment, or otherwise are unlawful or
24 unconstitutional with respect to dietary consumption of acrylamide, then Settling Defendant shall
25 meet and confer with CEH about modifications to this Consent Judgment. Settling Defendant
26 may thereafter move to modify this Consent Judgment to conform to such ruling, including
27 potential invalidation of the injunctive terms herein. CEH agrees not to oppose any such motion
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1 except for good cause shown. CEH further agrees that it would not have good cause to oppose
2 modification if a final judgment on the merits is entered in *California Chamber of Commerce v.*
3 *Bonta*, 2:19-cv-DJC-JDP (E.D. Cal.), holding that all acrylamide Proposition 65 dietary
4 consumption warnings for cancer violate the First Amendment.

5 **6.5 Change in Proposition 65.** If Proposition 65 or its implementing regulations
6 (including but not limited to the “safe harbor no significant risk level” for acrylamide set forth at
7 Cal. Code Regs., tit. 27, section 25705, subdivision (c)(2) or any “alternative risk level” adopted
8 by regulation or court decision) are changed from their terms as they exist on the date of entry of
9 this Consent Judgment in a manner that impacts the injunctive relief in this Consent Judgment, or
10 if OEHHA takes some other final regulatory action for products similar to the Covered Product in
11 a manner that impacts the injunctive relief in this Consent Judgment or that determines that
12 warnings for acrylamide are not required for such products, then Settling Defendant may seek to
13 modify this Consent Judgment.

14 **6.6 Scientific Studies.** If an agency of the federal government, including, but not
15 limited to the U.S. Food and Drug Administration, states through any guidance, regulation, or
16 other legally binding act, following a review of scientific studies and following public notice and
17 comment, a cancer potency estimate for acrylamide that equates to a no significant risk level
18 higher than 0.2 micrograms per day, then Settling Defendant shall be entitled to seek a
19 modification of this Consent Judgment to be relieved of its obligations to meet any requirements
20 of this Consent Judgment that are inconsistent with such a change.

21 **6.7 Federal Agency Action and Preemption.** If a court of competent jurisdiction or
22 an agency of the federal government, including, but not limited to the U.S. Food and Drug
23 Administration, states through any guidance, regulation, or other legally binding act that federal
24 law has preemptive effect on any of the requirements of this Consent Judgment, then this Consent
25 Judgment may be modified in accordance with the procedure for noticed motions set forth in
26 Section 6.1 to bring it into compliance with or avoid conflict with federal law. Any such
27 modification shall be limited to those changes that are necessary to bring this Consent Judgment
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1 into compliance with or avoid conflict with federal law.

2 **7. CLAIMS COVERED AND RELEASE**

3 7.1 Provided that Settling Defendant complies in full with its obligations under
4 Section 5 hereof, this Consent Judgment is a full, final, and binding resolution between CEH on
5 behalf of itself and the public interest and Settling Defendant and Settling Defendant’s parents,
6 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
7 agents, shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities
8 to which Settling Defendant directly or indirectly distributes or sells Covered Products, including
9 but not limited to all distributors, wholesalers, customers, retailers, including, but not limited to,
10 Safeway, Inc., Smart & Final Stores, Inc., Smart & Final Stores LLC, and Amerifoods Trading
11 Company LLC, franchisees, licensors, and licensees (“Downstream Defendant Releasees”), of
12 any violation of Proposition 65 based on failure to warn about alleged exposure to acrylamide
13 contained in Covered Products that were manufactured, purchased, or offered for sale by Settling
14 Defendant prior to the Effective Date.

15 7.2 Provided that Settling Defendant complies in full with its obligations under
16 Section 5 hereof, CEH, for itself, its agents, successors, and assigns, releases, waives, and forever
17 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream
18 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
19 common law claims that have been or could have been asserted by CEH regarding the failure to
20 warn about exposure to acrylamide arising in connection with Covered Products manufactured,
21 purchased, or offered for sale by Settling Defendant prior to the Effective Date.

22 7.3 Provided that Settling Defendant complies in full with its obligations under
23 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant
24 shall constitute compliance with Proposition 65 by Settling Defendant, its Defendant Releasees,
25 and its Downstream Defendant Releasees with respect to any alleged failure to warn about
26 acrylamide in Covered Products manufactured, purchased, or offered for sale by Settling
27 Defendant after the Effective Date.

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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 Joseph Mann
5 Lexington Law Group, LLP
6 503 Divisadero Street
7 San Francisco, CA 94117
8 jmann@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 Trenton H. Norris
12 Hogan Lovells US LLP
13 4 Embarcadero Center, Suite 3500
14 San Francisco, CA 94111
15 trent.norris@hoganlovells.com

16 8.3 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 use reasonable and
22 good faith efforts, to the extent necessary, to support entry of this Consent Judgment by the Court
23 (including providing requested evidence in the form of a detailed declaration regarding its efforts
24 to reduce acrylamide in Covered Products to date and other feasibility issues).

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

28 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.

1 **10. GOVERNING LAW AND CONSTRUCTION**

2 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California.

4 **11. ATTORNEYS' FEES**

5 11.1 Should CEH prevail on any motion, application, or action to enforce a violation of
6 the Consent Judgment, CEH shall be entitled to its reasonable attorneys' fees and costs incurred
7 as a result of such motion, application, or action. Should Settling Defendant prevail on such
8 dispute, Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result of
9 such motion, application, or action upon a finding by the Court that CEH's prosecution of the
10 motion, application, or action lacked substantial justification. For purposes of the Consent
11 Judgment, the term "substantial justification" shall carry the same meaning as used in the Civil
12 Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

13 11.2 Except as otherwise provided in this Consent Judgment, each Party shall bear its
14 own attorneys' fees and costs.

15 11.3 Nothing in this Section 11 shall preclude a Party from seeking an award of
16 sanctions pursuant to law.

17 **12. ENTIRE AGREEMENT**

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

5 **13. RETENTION OF JURISDICTION**

6 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
7 Consent Judgment. Notwithstanding the provisions of Section 6, nothing in this Consent
8 Judgment limits or affects the Court’s authority to modify this Consent Judgment as provided by
9 law.

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

11 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
12 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
13 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

14 **15. APPLICATION OF CONSENT JUDGMENT**

15 15.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
16 Defendant, and their respective divisions, subdivisions, and subsidiaries, and the successors or
17 assigns of any of them.

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

19 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
20 against an entity other than Settling Defendant on terms that are different from those contained in
21 this Consent Judgment.

22 **17. COMPLIANCE WITH REPORTING REQUIREMENTS**

23 17.1 CEH agrees to comply with the reporting form requirements referenced in Health
24 and Safety Code section 25249.7(f).

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1 **18. EXECUTION IN COUNTERPARTS**

2 18.1 The stipulations to this Consent Judgment may be executed in counterparts and by
3 means of facsimile or portable document format (pdf), which taken together shall be deemed to
4 constitute one document.

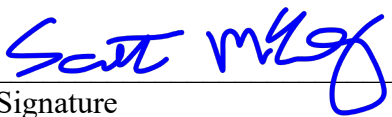
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6 **IT IS SO ORDERED, ADJUDGED,**
7 **AND DECREED**

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

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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

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IT IS SO STIPULATED:

Dated: <u>July 18, 2024</u>	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p></p> <p>_____ Signature</p> <p><u>Kizzy Charles-Guzman</u> Printed Name</p> <p><u>CEO</u> Title</p>
Dated: _____, 2024	<p>BELL-CARTER FOODS, LLC</p> <p>_____ Signature</p> <p>_____ Printed Name</p> <p>_____ Title</p>