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

CENTER FOR ENVIRONMENTAL HEALTH,) Case No. RG 17-851469
Plaintiff,)
v.) **[PROPOSED] CONSENT JUDGMENT**
FOODSHOULDTASTEGOOD, INC., *et al.*,) **AS TO MILTON’S BAKING**
Defendants.) **COMPANY, LLC**

1. DEFINITIONS

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

1.2 “Covered Products” means fried or baked potato or sweet potato based snack food products, but not including sliced potato or sliced sweet potato chips. It is the Parties’ intent that the Covered Products referenced in this Consent Judgment are the kind of potato or sweet potato based products falling within Type 4 in the “extruded, pellet, and baked products” category in the

1 Consent Judgment as to Defendant Snak King Corporation, entered August 31, 2011, in *People v.*
2 *Snyder's of Hanover, et al.*, Alameda County Superior Court Case No. RG 09-455286.¹ An
3 initial list of the Covered Products is attached as Exhibit A hereto.

4 1.3 "Effective Date" means the date on which notice of entry of this Consent
5 Judgment by the Court is served upon Settling Defendant.

6 **2. INTRODUCTION**

7 2.1 The Parties to this Consent Judgment are the Center for Environmental Health, a
8 California non-profit corporation ("CEH"), and Milton's Baking Company, LLC ("Settling
9 Defendant"). CEH and Settling Defendant (the "Parties") enter into this Consent Judgment to
10 settle certain claims asserted by CEH against Settling Defendant as set forth in the Complaint.

11 2.2 On or about November 29, 2016, CEH provided a 60-day Notice of Violation (the
12 "Notice") of Proposition 65 to the California Attorney General, the District Attorneys of every
13 county in California, the City Attorneys of every California city with a population greater than
14 750,000, and to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by
15 exposing persons to acrylamide contained in Covered Products without first providing a clear and
16 reasonable Proposition 65 warning.

17 2.3 Settling Defendant is a corporation or other business entity that manufactures,
18 distributes, sells, and/or offers for sale Covered Products that are sold in the State of California or
19 has done so in the past.

20 2.4 On March 2, 2017, CEH filed the original complaint in the above-captioned
21 matter, naming Settling Defendant as an original defendant. On May 23, 2017, CEH filed the
22 Complaint.

23 2.5 Since receiving the Notice, Settling Defendant has worked diligently to try to
24 reduce the acrylamide levels in the Covered Products. Settling Defendant has spent over
25 \$120,000 on these efforts, excluding attorneys' fees.

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27 _____
28 ¹ These products are referred to as "Group C, Type 4" products in Exhibit A to the Snak King Consent Judgment.

1 2.6 For purposes of this Consent Judgment only, the Parties stipulate that this Court
2 has jurisdiction over the allegations of violations contained in the Complaint and personal
3 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper
4 in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent
5 Judgment as a full and final resolution of all claims which were or could have been raised in the
6 Complaint based on the facts alleged therein with respect to Covered Products manufactured,
7 distributed, and/or sold by Settling Defendant.

8 2.7 Settling Defendant generally denies all of the material allegations made in the
9 Complaint and has asserted various affirmative defenses in the answer it filed on May 2, 2017.
10 Nothing in this Consent Judgment is or shall be construed as an admission by either of the Parties
11 of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with the
12 Consent Judgment constitute or be construed as an admission by any Party of any fact, conclusion
13 of law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive
14 or impair any right, remedy, argument, or defense any Party may have in any other pending or
15 future legal proceedings. This Consent Judgment is the product of negotiation and compromise
16 and is accepted by the Parties solely for purposes of settling, compromising, and resolving issues
17 disputed in this Action.

18 **3. INJUNCTIVE RELIEF**

19 3.1 **Reformulation of Covered Products.** Beginning on the day after notice of entry
20 of this Consent Judgment by the Court, or June 1, 2018, whichever is later (the “Compliance
21 Date”), Settling Defendant shall not purchase, manufacture, ship, sell, or offer for sale Covered
22 Products that will be sold or offered for sale in California that exceed the following acrylamide
23 concentration limits (the “Reformulation Levels”), such concentration to be determined by use of
24 a test performed by an accredited laboratory using either GC/MS (Gas Chromatograph/Mass
25 Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry) or any other testing
26 method agreed upon by the Parties:
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1 3.1.1 The average acrylamide concentration shall not exceed 350 parts per
2 billion (“ppb”) by weight (the “Average Level”). The Average Level is determined by randomly
3 selecting and testing at least 5 samples from 5 different lots of Covered Products (or the
4 maximum number of lots available for testing if less than 5) during a testing period of at least 60
5 days.

6 3.1.2 The acrylamide concentration of any individual unit shall not exceed 490
7 ppb by weight based on a representative composite sample taken from the individual unit being
8 tested (the “Unit Level”). An “individual unit” means the bag or other individual packaging unit
9 by which the Covered Product is sold to California consumers.

10 For avoidance of doubt, Covered Products manufactured, distributed or sold by Settling
11 Defendant prior to the Compliance Date are not subject to either the Reformulation Levels or the
12 Clear and Reasonable Warning provisions in Section 3.2, even if a third party sells such products
13 in California or to California consumers on or after the Compliance Date.

14 3.2 **Clear and Reasonable Warnings.** A Covered Product purchased, manufactured,
15 shipped, sold or offered for sale by Settling Defendant on or after the Compliance Date may, as
16 an alternative to meeting the Reformulation Levels set forth in Section 3.1, be sold or offered for
17 sale in California with a Clear and Reasonable Warning that complies with the provisions of this
18 Section 3.2.

19 3.2.1 A Clear and Reasonable Warning may only be provided for Covered
20 Products that Settling Defendant reasonably believes do not meet the Reformulation Levels. A
21 Clear and Reasonable Warning under this Consent Judgment shall state:

22 **WARNING:** Consuming this product can expose you to [chemicals including]
23 acrylamide, which is [are] known to the State of California to cause cancer. [Acrylamide
24 is formed in this product during cooking at high temperatures.] For more information go
25 to www.P65Warnings.ca.gov/food.

26 The word “**WARNING**” shall be displayed in all capital letters and bold print. Settling
27 Defendant may use the words in brackets as part of the warning, at its option. This warning
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1 statement shall be prominently displayed on the Covered Product, on the packaging of the
2 Covered Product, or on a placard or sign provided that the statement is displayed with such
3 conspicuousness, as compared with other words, statements or designs as to render it likely to be
4 read and understood by an ordinary individual prior to sale. If the warning statement is displayed
5 on the Covered Product's label, it must be set off from other surrounding information and
6 enclosed in a text box. If the warning statement is displayed on a placard or sign where the
7 Covered Product is offered for sale, the warning placard or sign must enable an ordinary
8 individual to easily determine which specific Covered Products the warning applies to, and to
9 differentiate between that Covered Product and other products to which the warning statement
10 does not apply.

11 The warning statement exemplars and graphics, attached hereto as Exhibit B, or ones that
12 are substantially similar to them (for example, if there is a change in font type, but not font size, or
13 a change in the background colors of the product bag or label that does not impact the visibility or
14 legibility of the warning statement, the warning statement would still be substantially similar to
15 Exhibit B) are hereby deemed to be Clear and Reasonable Warnings under this Consent Judgment.
16 Settling Defendant may comply with this Section 3.2 by either using a form of warning and graphic
17 in Exhibit B or one substantially similar to it, or another form of warning statement that complies
18 with the requirements of this Section 3.2.

19 3.2.2 For internet or catalog sales where Settling Defendant is the retailer
20 selling directly to consumers (the "Retail Seller"), by the Compliance Date Settling Defendant
21 will provide a Clear and Reasonable Warning in such a manner that it is likely to be read and
22 understood by an ordinary individual prior to the authorization of or actual payment. For internet
23 purchases, if a warning is provided by a clearly marked hyperlink using the word "WARNING"
24 on the product display page or by otherwise prominently displaying the warning to the purchaser
25 prior to completing the purchase, it shall be deemed to have been provided in a manner that is
26 likely to be read and understood by an ordinary individual prior to the authorization of or actual
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1 payment, although these are not the only methods for reasonably notifying a consumer before
2 authorization of or actual payment.

3 3.2.3 For internet or catalog sales, where Settling Defendant is not the Retail
4 Seller, by September 30, 2018 or the Compliance Date (whichever is later), and at least once a
5 year thereafter, Settling Defendant will provide a written notice to each of its direct customers
6 (i.e., distributors, wholesalers and other customers purchasing directly from Settling Defendant)
7 that it knows or reasonably should know are selling the Covered Product via the internet or
8 catalogs, which: (a) states that consumption of the Covered Products may result in an exposure to
9 acrylamide; (b) includes the exact name or description of the Covered Product(s) requiring a
10 Clear and Reasonable Warning or specific identifying information for the Covered Product(s)
11 requiring a Clear and Reasonable Warning (such as a Universal Product Code or other identifying
12 designation); (c) includes all necessary warning materials; and (d) informs them of the
13 requirement that a Clear and Reasonable Warning be provided to internet or catalog sales
14 consumers prior to the authorization of or actual payment. Settling Defendant shall obtain
15 written or electronic confirmation from its direct customers of their receipt of the written notice
16 required by this Section 3.2.3. Acceptable forms of written or electronic confirmation include but
17 are not limited to: return receipt from USPS; proof of delivery from federal express or other
18 overnight delivery service; and the retailer seller's admission of receipt such as by email, regular
19 mail, or other written or electronic means. As long as Settling Defendant complies with this
20 Section 3.2.3, Settling Defendant, Defendant Releasees and all Downstream Defendant Releasees
21 (except for any particular Retail Seller[s] who do[es] not provide a Clear and Reasonable
22 Warning to an internet or catalog consumer prior to authorization of or actual payment on or after
23 October 31, 2018 or the Compliance Date, whichever is later), shall be in compliance with this
24 Consent Judgment and shall not be subject to any penalties for violations of this Consent
25 Judgment if a different Retail Seller does not provide such a Clear and Reasonable Warning to an
26 internet or catalog consumer. Plaintiff CEH reserves all rights to bring a claim against any Retail
27 Seller, itself, who does not provide a warning statement to an internet or catalog consumer prior
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1 to the authorization of or actual payment on or after October 31, 2018 or the Compliance Date,
2 whichever is later.

3 **4. ENFORCEMENT**

4 4.1 **General Enforcement Provisions.** CEH may, by motion or application for an
5 order to show cause before this Court, enforce the terms and conditions contained in this Consent
6 Judgment. Any action by CEH to enforce alleged violations of Sections 3.1 or 3.2. or Proposition
7 65 with respect to any past, present or future acrylamide exposures arising from any Covered
8 Products manufactured, distributed or sold by Settling Defendant shall be brought exclusively
9 pursuant to this Section 4, and be subject to the meet and confer requirement of Section 4.2.4 if
10 applicable.

11 4.2 **Enforcement of Reformulation Commitment.**

12 4.2.1 Notice of Violation. In the event that CEH identifies a Covered Product
13 that was sold or offered for sale to California consumers with a best-by or sell-by (or equivalent)
14 date or other code that reflects that the Covered Product was manufactured on or after the
15 Compliance Date, and for which CEH has laboratory test results showing that the Covered
16 Product has an acrylamide level exceeding the Unit Level, and which lacks a Clear and
17 Reasonable Warning that complies with Section 3.2, CEH may issue a Notice of Violation
18 pursuant to this Section.

19 4.2.2 Service of Notice of Violation and Supporting Documentation.

20 4.2.2.1 Subject to Section 4.2.1, the Notice of Violation shall be sent to the
21 person(s) identified in Section 8.2 to receive notices for Settling Defendant, and must be served
22 within sixty (60) days of the later of the date the Covered Products at issue were purchased or
23 otherwise acquired by CEH or the date that CEH can reasonably determine that the Covered
24 Products at issue were manufactured, shipped, sold, or offered for sale by Settling Defendant,
25 provided, however, that CEH may have up to an additional sixty (60) days to send the Notice of
26 Violation if, notwithstanding CEH's good faith efforts, the test data required by Section 4.2.2.2
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1 below cannot be obtained by CEH from its laboratory before expiration of the initial sixty (60)
2 day period.

3 4.2.2.2 The Notice of Violation shall, at a minimum, set forth: (a) the date
4 the Covered Products were purchased; (b) the location at which the Covered Products were
5 purchased; (c) a description of the Covered Products giving rise to the alleged violation,
6 including 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; and (d) all test
8 data obtained by CEH regarding the Covered Products and supporting documentation sufficient
9 for validation of the test results, including any laboratory reports, quality assurance reports, and
10 quality control reports associated with testing of the Covered Products.

11 4.2.3 Notice of Election of Response. No more than sixty (60) days after
12 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to
13 CEH whether it elects to contest the allegations contained in a Notice of Violation (“Notice of
14 Election”). Failure to provide a Notice of Election within sixty (60) days of effectuation of
15 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.
16 Upon notice to CEH, Settling Defendant may have up to an additional sixty (60) days to elect if,
17 notwithstanding Settling Defendant’s good faith efforts, Settling Defendant is unable to verify the
18 test data provided by CEH before expiration of the initial sixty (60) day period.

19 4.2.3.1 If a Notice of Violation is contested, the Notice of Election shall
20 include all documents upon which Settling Defendant is relying to contest the alleged violation,
21 including all available test data. If Settling Defendant or CEH later acquires additional test or
22 other data regarding the alleged violation during the meet and confer period described in Section
23 4.2.4, it shall notify the other party and promptly provide all such data or information to the party
24 unless either the Notice of Violation or Notice of Election has been withdrawn.

25 4.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and Settling
26 Defendant shall meet and confer to attempt to resolve their dispute. Within sixty (60) days of
27 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw
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1 the original Notice of Election contesting the violation and serve a new Notice of Election to not
2 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay
3 \$2,500 in addition to any payment required under this Consent Judgment. At any time, CEH may
4 withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the result shall be
5 as if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of
6 Violation results within sixty (60) days of a Notice of Election to contest, CEH may file an
7 enforcement motion or application pursuant to Section 4.1. In any such proceeding, CEH may
8 seek whatever fines, costs, penalties, attorneys' fees, or other remedies are provided by law for an
9 alleged failure to comply with the Consent Judgment.

10 4.2.5 Non-Contested Notices. If Settling Defendant elects to not contest the
11 allegations in a Notice of Violation, it shall undertake corrective action(s) and make payments, if
12 any, as set forth below.

13 4.2.5.1 Settling Defendant shall include in its Notice of Election a detailed
14 description with supporting documentation of the corrective action(s) that it has undertaken or
15 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,
16 provide reasonable assurance that all Covered Products having the same lot number as that of the
17 Covered Product identified in CEH's Notice of Violation (the "Noticed Covered Products") will
18 not thereafter be sold or offered for sale to California consumers by Settling Defendant or its
19 wholesale customers. Settling Defendant shall keep for a period of one year and make available
20 to CEH upon reasonable notice (which shall not exceed more than one request per year) for
21 inspection and copying records regarding the foregoing. If there is a dispute over the corrective
22 action, Settling Defendant and CEH shall meet and confer before seeking any remedy in court. In
23 no case shall CEH issue more than one Notice of Violation per manufacturing lot of a type of
24 Covered Product, nor shall CEH issue more than two Notices of Violation in the first year
25 following the Compliance Date.

26 4.2.5.2 If the Notice of Violation is the first, second, third, or fourth Notice
27 of Violation received by Settling Defendant under Section 4.2.1 that was not successfully
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1 contested or withdrawn, then Settling Defendant shall pay \$15,000 for each Notice of Violation.
2 If Settling Defendant has received more than four (4) Notices of Violation under Section 4.2.1
3 that were not successfully contested or withdrawn, then Settling Defendant shall pay \$25,000 for
4 each Notice of Violation. If Settling Defendant produces with its Notice of Election test data for
5 the Covered Product that: (i) was conducted prior to the date CEH gave Notice of Violation;
6 (ii) was conducted on the same or same type of Covered Product; and (iii) demonstrates
7 acrylamide levels below the Unit Level, then any payment under this Section shall be reduced by
8 100 percent (100%) for the first Notice of Violation, by seventy-five percent (75%) for the
9 second Notice of Violation, and by fifty percent (50%) for any subsequent Notice of Violation.
10 In no case shall Settling Defendant be obligated to pay more than \$100,000 for uncontested
11 Notices of Violation in any calendar year irrespective of the total number of Notices of Violation
12 issued.

13 4.2.6 Payments. Any payments under Section 4.2 shall be made by check
14 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a
15 Notice of Election triggering a payment and shall be used as reimbursement for costs for
16 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse
17 attorneys’ fees and costs incurred in connection with these activities and shall be the full extent of
18 all monetary remedies available to CEH under this Consent Judgment for a non-contested Notice
19 of Violation.

20 4.3 **Repeat Violations.** If Settling Defendant has received four (4) or more Notices of
21 Violation concerning the same type of Covered Product that were not successfully contested or
22 withdrawn in any two (2) year period then, at CEH’s option, CEH may seek whatever fines,
23 costs, penalties, attorneys’ fees, or other remedies that are provided by law for failure to comply
24 with the Consent Judgment. Prior to seeking such relief, CEH shall meet and confer with Settling
25 Defendant for at least thirty (30) days to determine if Settling Defendant and CEH can agree on
26 measures that Settling Defendant can undertake to prevent future alleged violations.

1 **5. PAYMENTS**

2 **5.1 Payments by Settling Defendant.** Within ten (10) calendar days of the Effective
3 Date, Settling Defendant shall pay the total sum of \$180,000 as a settlement payment as further
4 set forth in this Section.

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

14 **5.2.1 \$24,400 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).**
15 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §
16 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
17 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
18 payment for \$18,300 shall be made payable to OEHHA and associated with taxpayer
19 identification number 68-0284486. This payment shall be delivered as follows:

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

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

1 The CEH portion of the civil penalty payment for \$6,100 shall be made
2 payable to the Center for Environmental Health and associated with taxpayer identification
3 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
4 Street, San Francisco, CA 94117.

5 5.2.2 \$18,300 as an Additional Settlement Payment (“ASP”) to CEH pursuant
6 to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204.
7 CEH intends to restrict use of the ASPs received from the Consent Judgment before the Court to
8 the following purposes: the funds will be placed in CEH’s Toxics in Food Fund and used to
9 support CEH programs and activities that seek to educate the public about acrylamide and other
10 toxic chemicals in food, to work with the food industry and agriculture interests to reduce
11 exposure to acrylamide and other toxic chemicals in food, and to thereby reduce the public health
12 impacts and risks of exposure to acrylamide and other toxic chemicals in food sold in California.
13 CEH shall obtain and maintain adequate records to document that ASPs are spent on these
14 activities and CEH agrees to provide such documentation to the Attorney General within thirty
15 days of any request from the Attorney General. The payment pursuant to this Section shall be
16 made payable to the Center for Environmental Health and associated with taxpayer identification
17 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
18 Street, San Francisco, CA 94117.

19 5.2.3 \$137,300 as a reimbursement of a portion of CEH’s reasonable attorneys’
20 fees and costs. The attorneys’ fees and cost reimbursement shall be made in two separate checks
21 as follows: (a) \$115,865 payable to the Lexington Law Group and associated with taxpayer
22 identification number 94-3317175; and (b) \$21,435 payable to the Center for Environmental
23 Health and associated with taxpayer identification number 94-3251981. These payments shall be
24 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

25 **6. MODIFICATION AND DISPUTE RESOLUTION**

26 6.1 **Modification.** This Consent Judgment may be modified from time to time by
27 express written agreement of the Parties, with the approval of the Court and prior notice to the
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1 Attorney General’s Office, or by an order of this Court upon motion and prior notice to the
2 Attorney General’s Office and in accordance with law.

3 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
4 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
5 modify the Consent Judgment.

6 **7. CLAIMS COVERED AND RELEASE**

7 7.1 Provided that Settling Defendant complies in full with its obligations under
8 Section 5 hereof, this Consent Judgment is a full, final, and binding resolution between CEH on
9 behalf of itself and the public interest and (a) Settling Defendant and its parents, subsidiaries,
10 affiliated entities that are under common ownership, directors, officers, employees, agents,
11 shareholders, owners, successors, assigns, and attorneys (“Defendant Releasees”), and (b) all
12 entities to which Settling Defendant directly or indirectly distributes or sells Covered Products,
13 including but not limited to distributors, wholesalers, customers, retailers (including but not
14 limited to Whole Foods Market California, Inc. and Mrs. Gooch’s Natural Food Markets, Inc.),
15 franchisees, licensors, and licensees (“Downstream Defendant Releasees”), of any violation of
16 Proposition 65 based on failure to warn about alleged exposure to acrylamide contained in
17 Covered Products that were manufactured, sold, distributed or offered for sale by Settling
18 Defendant prior to the Compliance Date. With respect to any Proposition 65 claims regarding
19 failure to warn about alleged exposure to acrylamide contained in Covered Products that were
20 manufactured, sold, distributed or offered for sale by Settling Defendant prior to the Compliance
21 Date, this release on behalf of CEH in the public interest is intended to be as broad as the law
22 permits.

23 7.2 Provided that Settling Defendant complies in full with its obligations under
24 Section 5 hereof, CEH, for itself, its agents, successors and assigns, releases, waives, and forever
25 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream
26 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
27 common law claims that have been or could have been asserted by CEH individually or in the
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1 public interest regarding the failure to warn about exposure to acrylamide arising in connection
2 with Covered Products manufactured, distributed or sold by Settling Defendant prior to the
3 Compliance Date.

4 7.3 Provided that Settling Defendant complies in full with its obligations under
5 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant
6 shall constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and
7 Downstream Defendant Releasees with respect to any alleged failure to warn about acrylamide in
8 Covered Products manufactured, distributed or sold by Settling Defendant on or after the
9 Compliance Date.

10 **8. PROVISION OF NOTICE**

11 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
12 notice shall be sent by first class and electronic mail to:

13 Howard Hirsch
14 Lexington Law Group
15 503 Divisadero Street
16 San Francisco, CA 94117
hhirsch@lexlawgroup.com

17 8.2 When Settling Defendant is entitled to receive any notice under this Consent
18 Judgment, the notice shall be sent by first class and electronic mail to:

19 John Reaves, CEO
20 Milton's Baking Company
21 5875 Avenida Encinas
22 Carlsbad, CA 92008
jreaves@miltonsbaking.com

23 **AND**

24 Howard Slavitt
25 Coblenz Patch Duffy & Bass LLP
26 One Montgomery Street, Suite 3000
27 San Francisco, CA 94104
28 hslavitt@cpdb.com

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.

1 **9. COURT APPROVAL**

2 9.1 This Consent Judgment shall be binding on each of the Parties upon the date
3 signed by CEH and Settling Defendant, whichever is later, provided however, that CEH shall
4 prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall
5 support entry of this Consent Judgment by the Court.

6 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
7 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
8 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

9 **10. GOVERNING LAW AND CONSTRUCTION**

10 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
11 California.

12 **11. ATTORNEYS' FEES**

13 11.1 A Party who unsuccessfully brings or contests an action, motion, or application
14 arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable
15 attorneys' fees and costs.

16 11.2 Nothing in this Section 11 shall preclude a Party from seeking an award of
17 sanctions pursuant to law.

18 **12. ENTIRE AGREEMENT**

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

6 **13. RETENTION OF JURISDICTION**

7 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
8 Consent Judgment.

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

10 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
11 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
12 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

14 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
15 against an entity that is not Settling Defendant on terms that are different than those contained in
16 this Consent Judgment. Settling Defendant may move to modify this Consent Judgment pursuant
17 to Section 6 to substitute higher Reformulation Levels that CEH agrees to in a future consent
18 judgment applicable to fried or baked potato or sweet potato based snack food products, and CEH
19 agrees not to oppose any such motion except for good cause shown.

20 **16. EXECUTION IN COUNTERPARTS**

21 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
22 means of facsimile or portable document format (pdf), which taken together shall be deemed to
23 constitute one document.

24 **IT IS SO ORDERED, ADJUDGED,
25 AND DECREED.**




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27 Dated: _____

Judge of the Superior Court

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IT IS SO STIPULATED:

<p>Dated: <u>23 Feb</u>, 2018</p>	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p></p> <p>_____ Signature</p> <p></p> <p>_____ Printed Name</p> <p></p> <p>_____ Title</p>
<p>Dated: _____, 2018</p>	<p>MILTON'S BAKING COMPANY, LLC</p> <p>_____ Signature</p> <p>_____ Printed Name</p> <p>_____ Title</p>

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IT IS SO STIPULATED:

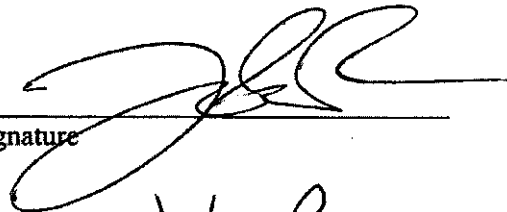
Dated: _____, 2018	CENTER FOR ENVIRONMENTAL HEALTH _____ Signature _____ Printed Name _____ Title
Dated: <u>16 February</u> 2018	MILTON'S BAKING COMPANY, LLC  _____ Signature <u>John Reaves</u> Printed Name <u>CEO</u> Title

EXHIBIT A

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- Milton's Gluten Free Crispy Sea Salt Baked Crackers
- Milton's Gluten Free Cheddar Cheese Baked Crackers
- Milton's Gluten Free Everything Baked Crackers
- Milton's Gluten Free Multi-Grain Baked Crackers
- Milton's Gluten Free Baked Crackers in Other Flavors to be Introduced in the future

Exhibit B

GLUTEN FREE

Cheddar Cheese

BAKED CRACKERS

4 Grains and Real Cheddar Cheese, Perfect for Snacking, Stacking and Dipping

The best things in life are free. Finally, that's true when it comes to gluten free. Because at last there's a cracker that everyone can love. It's a crunchy, munchable celebration of the simple pleasures of snacking. Milton's GLUTEN FREE Cheddar Cheese Crackers are a grain lover's dream without any wheat, but with all the flavor and fun baked inside. **Certified Gluten Free**, these gourmet delights are made with the finest wholesome, ingredients that are **verified Non GMO**. Everyone deserves a Milton's moment, whether you're living gluten free or sharing your passion for food with family and friends. Just open a bag and indulge. Milton's GLUTEN FREE: **Eat well. Be free.™**



Amazing Milton's Moments™

Sometimes it's nice to get all dressed up. Here are some ways Milton's crackers can be dressed to impress, whether you decide to share them or keep them all to yourself.

- **The Perfect Pairing** – Dip into artichoke hummus or your own favorite variety for a sensational flavor experience.
- **Southwest Snacking** – Pile on a zesty blend of sweet corn, black bean & red pepper salsa.
- **Reel-in Big Flavor** – Top with smoked salmon & dill cream cheese, simply incredible!

Delicious You Can Feel Good About!™



4
Grains
In Every Bite



XANTHAN GUM
FREE

rBST
FREE



Nutrition Facts

Servings Per Bag About 4.5
Serving size About 14 Crackers **30g**

Amount per serving
Calories **130**
% Daily Value*

Total Fat 4.5g	6%
Saturated Fat 1g	5%
Trans Fat 0g	
Polyunsaturated Fat 0.5g	
Monounsaturated Fat 3g	
Cholesterol 0mg	0%
Sodium 280mg	12%
Total Carbohydrate 21g	8%
Dietary Fiber 0g	0%
Total Sugars 1g	
Includes 0g Added Sugars	0%

Protein 3g
Vit. D 0mcg 0% • Calcium 30mg 2%
Iron 1.5mg 8% • Potassium 60mg 2%

*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

INGREDIENTS: BROWN RICE FLOUR, CORN FLOUR, GLUTEN FREE OATS, POTATO STARCH, HIGH OLEIC SUNFLOWER OIL (TOCOPHEROLS, ROSEMARY EXTRACT, AND ASCORBYL PALMITATE ADDED AS AN ANTIOXIDANT), POTATO FLAKES, CHEDDAR FLAVOR (TAPIOCA DEXTRIN, SALT, SUNFLOWER OIL, NATURAL FLAVOR), ORGANIC CHEESE BLEND (ORGANIC CHEDDAR CHEESE [ORGANIC CULTURED PASTEURIZED MILK, SALT, ENZYMES], ORGANIC NONFAT MILK, ORGANIC BUTTERMILK, SALT, DISODIUM PHOSPHATE), RICE FLOUR, MOLASSES GRANULES (SYRUP, MOLASSES). CONTAINS LESS THAN 2% OF: ANNATTO, LEAVENING (MONOCALCIUM PHOSPHATE SODIUM ACID PYROPHOSPHATE, BAKING SODA), BETA CAROTENE, CANE SUGAR, SEA SALT, SUNFLOWER LECITHIN, YEAST (SORBITAN MONOSTEARATE, ASCORBIC ACID).

ALLERGEN INFORMATION: CONTAINS MILK.

WARNING: Consuming this product can expose you to acrylamide, which is known to the State of California to cause cancer. Acrylamide is formed in this product during cooking at high temperatures. For more information go to www.P65Warnings.ca.gov/food.

STORE IN A COOL, DRY PLACE, AND RESEAL BAG FOR FRESHNESS
DISTRIBUTED BY: Milton's Baking Company, Carlsbad CA, 92008
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MiltonsCraftBakers.com

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GLUTEN FREE

Everything

BAKED CRACKERS

7 Grains & 4 Seeds Perfect for Snacking, Stacking and Dipping

The best things in life are free. Finally, that's true when it comes to gluten free. Because at last there's a cracker that everyone can love. It's a crunchable, munchable celebration of the simple pleasures of snacking. Milton's **GLUTEN FREE Everything Crackers** are a grain lover's dream without any wheat, but with all the flavor and fun baked inside. **Certified Gluten Free**, these gourmet delights are made with the finest **wholesome** ingredients that are **verified Non GMO**. Everyone deserves a Milton's moment, whether you're living gluten free or sharing your passion for food with family and friends. Just open a bag and indulge. **Milton's GLUTEN FREE: Eat well. Be free.™**



Amazing Milton's Moments™

Sometimes it's nice to get all dressed up. Here are some ways Milton's crackers can be dressed to impress, whether you decide to share them or keep them all to yourself.

- **Create a dip** with finely cut artichokes, roasted sweet red peppers and green onion.
- **Make a delicious appetizer** with rolled smoked salmon, goat cheese and chives.
- **Get a taste of the Mediterranean** by dressing with 3 olive tapenade and havarti cheese.



Delicious You Can Feel Good About!™



7 Grains
4 Seeds
In Every Bite



XANTHAN GUM
FREE



rBST
FREE



SERVING SUGGESTION
RECIPE BELOW

Nutrition Facts

Servings Per Bag About 4.5	
Serving size About 14 Crackers 30g	
Amount per serving	
Calories	130
% Daily Value*	
Total Fat 4.5g	6%
Saturated Fat 0g	0%
Trans Fat 0g	
Polyunsaturated Fat 0.5g	
Monounsaturated Fat 2.5g	
Cholesterol 0mg	0%
Sodium 180mg	8%
Total Carbohydrate 21g	8%
Dietary Fiber 0g	0%
Total Sugars 2g	
Includes 2g Added Sugars	4%
Protein 2g	
Vit. D 0mcg 0% • Calcium 30mg 2%	
Iron 1mg 6% • Potassium 80mg 2%	
*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.	
Calories per gram:	
Fat 9 • Carbohydrate 4 • Protein 4	

INGREDIENTS: BROWN RICE FLOUR, GLUTEN FREE OATS, POTATO FLAKES, POTATO STARCH, CORN FLOUR, HIGH OLEIC SUNFLOWER OIL (TOCOPHEROLS, ROSEMARY EXTRACT, AND ASCORBYL PALMITATE ADDED AS AN ANTIOXIDANT), RICE FLOUR, CANE SUGAR, WHITE TOASTED SESAME SEEDS, MOLASSES GRANULES (SYRUP, MOLASSES), CONTAINS LESS THAN 2% OF: AMARANTH, BAKER'S YEAST, BLACK SESAME SEEDS, SPICE BLEND (POPPY SEEDS, CARAWAY SEEDS, SESAME SEEDS, DEHYDRATED ONION), MILLET, QUINOA SEEDS, POPPY SEEDS, SEA SALT, LEAVENING (MONOCALCIUM PHOSPHATE, SODIUM ACID PYROPHOSPHATE, BAKING SODA), SUGAR, WHEY PROTEIN CONCENTRATE, SUNFLOWER LECITHIN, SALT, GARLIC POWDER, NATURAL BUTTER FLAVOR, CARAWAY SEEDS.

ALLERGEN INFORMATION: CONTAINS MILK.

WARNING: Consuming this product can expose you to acrylamide, which is known to the State of California to cause cancer. Acrylamide is formed in this product during cooking at high temperatures. For more information go to www.P65Warnings.ca.gov/food.

STORE IN A COOL, DRY PLACE, AND RESEAL BAG FOR FRESHNESS

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TWITTER: @MILTONSBAKING

8.25"
FACE PANEL

5"
ZIPPER

GLUTEN FREE

Multi-Grain

BAKED CRACKERS

7 Grains & 3 Seeds Perfect for Snacking, Stacking and Dipping

The best things in life are free. Finally, that's true when it comes to gluten free. Because at last there's a cracker that everyone can love. It's a crunchable, munchable celebration of the simple pleasures of snacking. Milton's GLUTEN FREE Multi-Grain Crackers are a grain lover's dream without any wheat, but with all the flavor and fun baked inside. Certified Gluten Free, these gourmet delights are made with the finest wholesome ingredients that are verified Non GMO. Everyone deserves a Milton's moment, whether you're living gluten free or sharing your passion for food with family and friends. Just open a bag and indulge. Milton's GLUTEN FREE: *Eat well. Be free.*™



Amazing Milton's Moments™

Sometimes it's nice to get all dressed up. Here are some ways Milton's crackers can be dressed to impress, whether you decide to share them or keep them all to yourself.

- **Fun with fruit!** Fresh apple slices with Monterey Jack cheese.
- **That's amore.** Add a dab of creamy Mascarpone topped with a tricolor pepper medley.
- **For a slice of heaven,** try cucumber slices layered with cream cheese and sweet Piquillo peppers.

Delicious You Can Feel Good About!™



7 | 3
Grains | Seeds
In Every Bite



XANTHAN GUM
FREE

rBST
FREE



Nutrition Facts

Servings Per Bag About 4.5

Serving size About 14 Crackers **30g**

Amount per serving

Calories 130

% Daily Value*

Total Fat 4.5g **6%**

Saturated Fat 0g **0%**

Trans Fat 0g

Polyunsaturated Fat 0.5g

Monounsaturated Fat 2.5g

Cholesterol 0mg **0%**

Sodium 250mg **11%**

Total Carbohydrate 21g **8%**

Dietary Fiber 0g **0%**

Total Sugars 3g

Includes 2g Added Sugars 4%

Protein 2g

Vit. D 0mcg 0% • **Calcium** 30mg 2%

Iron 1mg 6% • **Potassium** 80mg 2%

*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

Calories per gram:

Fat 9 • Carbohydrate 4 • Protein 4

INGREDIENTS: BROWN RICE FLOUR, POTATO FLAKES, GLUTEN FREE OATS, POTATO STARCH, CORN FLOUR, HIGH OLEIC SUNFLOWER OIL (TOCOPHEROLS, ROSEMARY EXTRACT, AND ASCORBYL PALMITATE ADDED AS AN ANTIOXIDANT), RICE FLOUR, CANE SUGAR, MOLASSES GRANULES (SYRUP; MOLASSES), WHITE TOASTED SESAME SEEDS, SUGAR. CONTAINS LESS THAN 2% OF: AMARANTH FLOUR, BAKER'S YEAST, BLACK SESAME SEEDS, MILLET FLOUR, LEAVENING (MONOCALCIUM PHOSPHATE, SODIUM ACID PYROPHOSPHATE, BAKING SODA), SEA SALT, NATURAL BUTTER FLAVOR, QUINOA FLOUR, POPPY SEEDS, SALT, SEA SALT, SUNFLOWER LECITHIN, WHEY PROTEIN CONCENTRATE.

ALLERGEN INFORMATION: CONTAINS MILK.

WARNING: Consuming this product can expose you to acrylamide, which is known to the State of California to cause cancer. Acrylamide is formed in this product during cooking at high temperatures. For more information go to www.P65Warnings.ca.gov/food.

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[TWITTER: @MILTONSBAKING](https://twitter.com/miltonsbaking)

GLUTEN FREE

Crispy Sea Salt

BAKED CRACKERS

5 Grains and a Hint of Sea Salt Perfect for Snacking, Stacking and Dipping

The best things in life are free. Finally, that's true when it comes to gluten free. Because at last there's a cracker that everyone can love. It's a crunchable, munchable celebration of the simple pleasures of snacking. Milton's GLUTEN FREE Crispy Sea Salt Crackers are a grain lover's dream without any wheat, but with all the flavor and fun baked inside. Certified Gluten Free, these gourmet delights are made with the finest wholesome ingredients that are verified Non GMO. Everyone deserves a Milton's moment, whether you're living gluten free or sharing your passion for food with family and friends. Just open a bag and indulge. Milton's GLUTEN FREE: *Eat well. Be free.*[™]



Amazing Milton's Moments[™]

Sometimes it's nice to get all dressed up. Here are some ways Milton's crackers can be dressed to impress, whether you decide to share them or keep them all to yourself.

- Embrace bold flavors with creamy, sharp blue cheese and a fine julienne of red onion.
- Spread some joy with your favorite dill spread or roasted red pepper hummus.
- Create a festive fiesta with fresh, lightly mashed avocado and diced red peppers.



Delicious You Can Feel Good About![™]



XANTHAN GUM FREE



5 Grains In Every Bite



rBST FREE



Nutrition Facts

Servings Per Bag 4.5

Serving size About 14 Crackers 30g

Amount per serving

Calories 130

% Daily Value*

Total Fat 4g **5%**

Saturated Fat 0g **0%**

Trans Fat 0g

Polyunsaturated Fat 0.5g

Monounsaturated Fat 2.5g

Cholesterol 0mg **0%**

Sodium 230mg **10%**

Total Carbohydrate 22g **8%**

Dietary Fiber 0g **0%**

Total Sugars 2g

Includes 1g Added Sugars **2%**

Protein 2g

Vit. D 0mcg 0% • Calcium 20mg 2%

Iron 1.4mg 8% • Potassium 50mg 2%

*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

Calories per gram:

Fat 9 • Carbohydrate 4 • Protein 4

INGREDIENTS: BROWN RICE FLOUR, CORN FLOUR, GLUTEN FREE OATS, POTATO STARCH, POTATO FLAKES, HIGH OLEIC SUNFLOWER OIL (TOCOPHEROLS, ROSEMARY EXTRACT, AND ASCORBYL PALMITATE ADDED AS AN ANTIOXIDANT), RICE FLOUR, SUGAR, CONTAINS LESS THAN 2% OF: BAKERS YEAST, MILLET, CANE SUGAR, NATURAL BUTTER FLAVOR, SEA SALT, LEAVENING (MONOCALCIUM PHOSPHATE, SODIUM ACID PYROPHOSPHATE, BAKING SODA), SALT, SUNFLOWER LECITHIN, WHEY PROTEIN CONCENTRATE, YEAST (SORBITAN MONOSTEARATE, ASCORBIC ACID).

ALLERGEN INFORMATION: CONTAINS MILK.

WARNING: Consuming this product can expose you to acrylamide, which is known to the State of California to cause cancer. Acrylamide is formed in this product during cooking at high temperatures. For more information go to www.P65Warnings.ca.gov/food.

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