



1       **2.       INTRODUCTION**

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

6               2.2       On or about January 12, 2017, CEH provided a 60-day Notice of Violation of  
7 Proposition 65 to the California Attorney General, the District Attorneys of every county in  
8 California, the City Attorneys of every California city with a population greater than 750,000,  
9 and to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing  
10 persons in California to acrylamide contained in Covered Products without first providing a clear  
11 and reasonable Proposition 65 warning (the “Notices”).

12              2.3       On or about August 25, 2017, CEH provided a 60-day Notice of Violation of  
13 Proposition 65 to the California Attorney General, the District Attorneys of every county in  
14 California, the City Attorneys of every California city with a population greater than 750,000, and  
15 to Wal-Mart Stores, Inc. and Wal-Mart.com USA, LLC, alleging that Wal-Mart Stores, Inc. and  
16 Wal-Mart.com USA, LLC violated Proposition 65 by exposing persons in California to acrylamide  
17 contained in certain Covered Products without first providing a clear and reasonable Proposition  
18 65 warning.

19              2.4       Settling Defendant is a corporation or other business entity that manufactures,  
20 distributes, sells, or offers for sale Covered Products that are sold in the State of California or has  
21 done so at times relevant to the Complaint.

22              2.5       On November 9, 2017, CEH filed the Complaint in the above-captioned matter,  
23 naming Settling Defendant as an original defendant.

24              2.6       For purposes of this Consent Judgment only, the Parties stipulate that this Court  
25 has jurisdiction over the allegations of violations contained in the Complaint and personal  
26 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper  
27 in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent

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1 Judgment as a full and final resolution of all claims which were or could have been raised in the  
2 Complaint based on the facts alleged therein and in the Notices with respect to Covered Products  
3 manufactured, distributed, and/or sold by Settling Defendant.

4 2.7 Nothing in this Consent Judgment is or shall be construed as an admission against  
5 interest by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall  
6 compliance with the Consent Judgment constitute or be construed as an admission against interest  
7 by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this  
8 Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the  
9 Parties may have in any other pending or future legal proceedings. This Consent Judgment is the  
10 product of negotiation and compromise and is accepted by the Parties solely for purposes of  
11 settling, compromising, and resolving issues disputed in this action.

### 12 3. INJUNCTIVE RELIEF

13 3.1 **Reformulation of Covered Products.** Commencing on the Effective Date, and  
14 subject to the provisions at Section 4.2.1 herein, Settling Defendant shall not purchase,  
15 manufacture, ship, sell, or offer for sale Covered Products that will be sold or offered for sale in  
16 California that exceed the following acrylamide concentration limits (the “Reformulation  
17 Levels”), such concentration to be determined by use of a test performed by an accredited  
18 laboratory using either GC/MS (Gas Chromatograph/Mass Spectrometry), LC-MS/MS (Liquid  
19 Chromatograph-Mass Spectrometry), or any other testing method agreed upon by the Parties:

20 3.1.1 The average acrylamide concentration shall not exceed 281 parts per  
21 billion (“ppb”) by weight (the “Average Level”). The Average Level is determined by randomly  
22 selecting and testing at least 1 sample each from 5 different lots (a lot is a single production run  
23 on a single production line) of Covered Products (or the maximum number of lots available for  
24 testing if less than 5) during a testing period of at least 60 days.

25 3.1.2 The acrylamide concentration of any individual unit of Covered Products  
26 shall not exceed 300 ppb by weight (the “Unit Level”), based on a representative composite  
27 sample taken from the individual unit (e.g. bag or box of Covered Products) being tested.

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1     **4.     ENFORCEMENT**

2             **4.1     General Enforcement Provisions.** CEH may, by motion or application for an  
3 order to show cause before this Court, enforce the terms and conditions contained in this Consent  
4 Judgment. Any action to enforce alleged violations of Section 3.1 by Settling Defendant shall be  
5 brought exclusively pursuant to this Section 4, and be subject to the meet and confer requirement  
6 of Section 4.2.4 if applicable.

7             **4.2     Enforcement of Reformulation Commitment.**

8             **4.2.1     Notice of Violation.** In the event that CEH purchases a Covered Product  
9 in California that was sold or offered for sale by Settling Defendant with a best-by or sell-by (or  
10 equivalent) date more than 9 months after the Effective Date, and for which CEH has laboratory  
11 test results showing that the Covered Product exceeds the Unit Level, CEH may issue a Notice of  
12 Violation pursuant to this Section.

13             **4.2.2     Service of Notice of Violation and Supporting Documentation.**

14             **4.2.2.1**     The Notice of Violation shall be sent to the person(s) identified in  
15 Section 8.2 to receive notices for Settling Defendant, and must be served within sixty (60) days of  
16 the later of the date the Covered Product at issue was purchased or otherwise acquired by CEH or  
17 the date that CEH can reasonably determine that the Covered Product at issue was manufactured,  
18 shipped, sold, or offered for sale by Settling Defendant, provided, however, that CEH may have  
19 up to an additional sixty (60) days to send the Notice of Violation if, notwithstanding CEH's  
20 good faith efforts, the test data required by Section 4.2.2.2 below cannot be obtained by CEH  
21 from its laboratory before expiration of the initial sixty (60) day period.

22             **4.2.2.2**     The Notice of Violation shall, at a minimum, set forth: (a) the date  
23 the Covered Product was purchased; (b) the location at which the Covered Product was  
24 purchased; (c) a description of the Covered Product giving rise to the alleged violation, including  
25 the name and address of the retail entity from which the sample was obtained and pictures of the  
26 product packaging from all sides, which identifies the product lot; and (d) all test data obtained  
27 by CEH regarding the Covered Product and supporting documentation sufficient for validation of  
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1 the test results, including any laboratory reports, quality assurance reports, and quality control  
2 reports associated with testing of the Covered Product.

3 4.2.3 Notice of Election of Response. No more than sixty (60) days after  
4 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to  
5 CEH whether or not it elects to contest the allegations contained in a Notice of Violation (“Notice  
6 of Election”). Failure to provide a Notice of Election within sixty (60) days of effectuation of  
7 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.  
8 Upon notice to CEH, Settling Defendant may have up to an additional sixty (60) days to elect if,  
9 notwithstanding Settling Defendant’s good faith efforts, Settling Defendant is unable to verify the  
10 test data provided by CEH before expiration of the initial thirty (30) day period.

11 4.2.3.1 If a Notice of Violation is contested, the Notice of Election shall  
12 include all documents upon which Settling Defendant is relying to contest the alleged violation,  
13 including all available test data. If Settling Defendant or CEH later acquires additional test or  
14 other data regarding the alleged violation during the meet and confer period described in Section  
15 4.2.4, it shall notify the other Party and promptly provide all such data or information to the Party  
16 unless either the Notice of Violation or Notice of Election has been withdrawn.

17 4.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and Settling  
18 Defendant shall meet and confer to attempt to resolve their dispute. Within sixty (60) days of  
19 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw  
20 the original Notice of Election contesting the violation and serve a new Notice of Election to not  
21 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay  
22 \$2,500 in addition to any other payment required under this Consent Judgment. At any time,  
23 CEH may withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the  
24 result shall be as if CEH never issued any such Notice of Violation. If no informal resolution of a  
25 Notice of Violation results within sixty (60) days of a Notice of Election to contest, CEH may file  
26 an enforcement motion or application pursuant to Section 4.1. In any such proceeding, CEH may  
27 seek whatever fines, costs, penalties, attorneys’ fees, or other remedies are provided by law for an  
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1 alleged failure to comply with the Consent Judgment, and Settling Defendant shall reserve all of  
2 its rights to contest, dispute and defend the Notice of Violation including all allegations therein in  
3 the enforcement motion or application proceeding.

4 4.2.5 Non-Contested Notices. If Settling Defendant elects to not contest the  
5 allegations in a Notice of Violation, it shall undertake corrective action(s) and make payments, if  
6 any, as set forth below.

7 4.2.5.1 Settling Defendant shall include in its Notice of Election a detailed  
8 description with supporting documentation of the corrective action(s) that it has undertaken or  
9 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,  
10 provide reasonable assurance that all Covered Products having the same lot number as that of the  
11 Covered Product identified in CEH's Notice of Violation (the "Noticed Covered Products") will  
12 not be thereafter sold in California or offered for sale to California customers by Settling  
13 Defendant, and that Settling Defendant has sent instructions to any retailers or customers that  
14 offer the Noticed Covered Products for sale to cease offering the Noticed Covered Products for  
15 sale to California consumers and to return all such Noticed Covered Products to Settling  
16 Defendant if Settling Defendant has reason to believe the Noticed Covered Products are still  
17 offered for sale to California consumers. Settling Defendant shall keep for a period of one year  
18 after the Notice of Violation and make available to CEH upon reasonable notice during the one  
19 year period for inspection and copying records of any correspondence regarding the foregoing. If  
20 there is a dispute over the corrective action, Settling Defendant and CEH shall meet and confer  
21 before seeking any remedy in court. In no case shall CEH issue more than one Notice of  
22 Violation per manufacturing lot of a type of Covered Product, nor shall CEH issue more than two  
23 Notices of Violation in the first year following the Effective Date.

24 4.2.5.2 If the Notice of Violation is the first, second, third, or fourth Notice  
25 of Violation received by Settling Defendant under Section 4.2.1 that was not successfully  
26 contested or withdrawn, then Settling Defendant shall pay \$15,000 for each Notice of Violation.  
27 If Settling Defendant has received more than four (4) Notices of Violation under Section 4.2.1  
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1 that were not successfully contested or withdrawn, then Settling Defendant shall pay \$25,000 for  
2 each Notice of Violation. If Settling Defendant produces with its Notice of Election test data for  
3 the Covered Product that: (i) was conducted prior to the date CEH gave Notice of Violation;  
4 (ii) was conducted on the same type of Covered Product; and (iii) demonstrates acrylamide levels  
5 below the Unit Level, then any payment under this Section shall be reduced by 100 percent  
6 (100%) for the first Notice of Violation, by seventy-five percent (75%) for the second Notice of  
7 Violation, and by fifty percent (50%) for any subsequent Notice of Violation. In no case shall  
8 Settling Defendant be obligated to pay more than \$100,000 for all Notices of Violation not  
9 successfully contested or withdrawn in any calendar year irrespective of the total number of  
10 Notices of Violation issued.

11           4.2.6    Payments. Any payments under Section 4.2 shall be made by check  
12 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a  
13 Notice of Election triggering a payment by agreement, and shall be used as reimbursement for  
14 costs for investigating, preparing, sending, and prosecuting Notices of Violation, and to  
15 reimburse attorneys’ fees and costs incurred in connection with these activities.

16           4.3     **Repeat Violations.** If Settling Defendant has received four (4) or more Notices of  
17 Violation concerning the same type of Covered Product that were not successfully contested or  
18 withdrawn in any one (1) year period then, at CEH’s option, CEH may seek whatever fines, costs,  
19 penalties, attorneys’ fees, or other remedies that are provided by law for failure to comply with  
20 the Consent Judgment. Prior to seeking such relief, CEH shall meet and confer with Settling  
21 Defendant for at least sixty (60) days to determine if Settling Defendant and CEH can agree on  
22 measures that Settling Defendant can undertake to prevent future alleged violations.

23   **5.     PAYMENTS**

24           5.1     **Payments by Settling Defendant.** Within ten (10) calendar days of the Effective  
25 Date, Settling Defendant shall pay the total sum of \$100,000 as a settlement payment as further  
26 set forth in this Section.

27           5.2     **Allocation of Payments.** The total settlement amount shall be paid in five (5)

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

9                   5.2.1   \$13,430 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).

10 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §  
11 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health  
12 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty  
13 payment for \$10,072.50 shall be made payable to OEHHA and associated with taxpayer  
14 identification number 68-0284486. This payment to OEHHA shall be delivered as follows:

15                                   For United States Postal Service Delivery:

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

21                                   For Non-United States Postal Service Delivery:

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

27                   The CEH portion of the civil penalty payment for \$3,357.50 shall be made  
28 payable to the Center for Environmental Health and associated with taxpayer identification  
number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero  
Street, San Francisco, CA 94117.



1                   5.2.2   \$10,070 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, 503 Divisadero Street, San  
14 Francisco, CA 94117.

15                   5.2.3   \$76,500 as a reimbursement of a portion of CEH’s reasonable attorneys’  
16 fees and costs. The attorneys’ fees and cost reimbursement shall be made in two separate checks  
17 as follows: (a) \$64,665 payable to the Lexington Law Group and associated with taxpayer  
18 identification number 94-3317175; and (b) \$11,835 payable to the Center for Environmental  
19 Health and associated with taxpayer identification number 94-3251981. These payments shall be  
20 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

21   **6.       MODIFICATION AND DISPUTE RESOLUTION**

22                   6.1    **Modification.** This Consent Judgment may be modified from time to time by  
23 express written agreement of the Parties, with the approval of the Court, or by an order of this  
24 Court upon motion and in accordance with law.

25                   6.2    **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
26 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to  
27 modify the Consent Judgment.

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1       **7.       CLAIMS COVERED AND RELEASE**

2           7.1       Provided that Settling Defendant complies in full with its obligations under  
3 Section 5 hereof, this Consent Judgment is a full, final and binding resolution between CEH on  
4 behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries,  
5 affiliated entities that are under common ownership, directors, officers, employees, agents,  
6 shareholders, predecessors, successors, assigns, and attorneys (“Defendant Releasees”), and all  
7 entities to which Settling Defendant directly or indirectly distributes or sells Covered Products,  
8 including but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors,  
9 and licensees, including, but not limited to, Smart & Final Stores, LLC, Amerifoods Trading  
10 Company, LLC, Wal-Mart Stores, Inc., and Wal-Mart.com USA, LLC (“Downstream Defendant  
11 Releasees”), of any violation of Proposition 65 based on failure to warn about alleged exposure to  
12 acrylamide contained in Covered Products that were sold, distributed, or offered for sale by  
13 Settling Defendant prior to the Effective Date.

14           7.2       Provided that Settling Defendant complies in full with its obligations under  
15 Section 5 hereof, CEH, for itself, its agents, predecessors, successors and assigns, releases,  
16 waives, and forever discharges any and all claims against Settling Defendant, Defendant  
17 Releasees, and Downstream Defendant Releasees arising from any violation of Proposition 65 or  
18 any other statutory or common law claims that have been or could have been asserted by CEH  
19 individually or in the public interest regarding the failure to warn about exposure to acrylamide  
20 arising in connection with Covered Products manufactured, distributed or sold by Settling  
21 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, Defendant Releasees and  
25 Downstream Defendant Releasees with respect to any alleged failure to warn about acrylamide in  
26 Covered Products manufactured, distributed, or sold by Settling Defendant after the Effective  
27 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 Howard Hirsch  
5 Lexington Law Group  
6 503 Divisadero Street  
7 San Francisco, CA 94117  
8 hhirsch@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 Robert Parks  
12 Parks & Solar LLP  
13 501 West Broadway, Suite 1540  
14 San Diego, CA 92101  
15 rparks@parksandsolar.com

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

18 **9. COURT APPROVAL**

19 9.1 This Consent Judgment shall become effective upon the date signed by CEH and  
20 Settling Defendant, whichever is later, and approval by the Court, provided however, that CEH  
21 shall prepare and file a Motion for Approval of this Consent Judgment, and Settling Defendant  
22 shall support entry of this Consent Judgment by the Court.

23 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or  
24 effect and shall not be introduced into evidence or otherwise used in any proceeding for any  
25 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

26 9.3 If this Consent Judgment is approved by the Court, CEH shall not pursue its claims  
27 in this action against Smart & Final Stores, LLC, Amerifoods Trading Company, LLC, Wal-Mart  
28 Stores, Inc., and Wal-Mart.com USA, LLC as to Covered Products supplied by Settling Defendant  
only.

**10. GOVERNING LAW AND CONSTRUCTION**

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

1 California.

2 **11. ATTORNEYS' FEES**

3 11.1 A Party who unsuccessfully brings or contests an action, motion, or application  
4 arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable  
5 attorneys' fees and costs.

6 11.2 Nothing in this Section 11 shall preclude a party from seeking an award of  
7 sanctions pursuant to law.

8 **12. ENTIRE AGREEMENT**

9 12.1 This Consent Judgment contains the sole and entire agreement and understanding  
10 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
11 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
12 and therein. There are no warranties, representations, or other agreements between the Parties  
13 except as expressly set forth herein. No representations, oral or otherwise, express or implied,  
14 other than those specifically referred to in this Consent Judgment have been made by any Party  
15 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,  
16 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically  
17 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the  
18 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,  
19 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
20 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
21 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
22 whether or not similar, nor shall such waiver constitute a continuing waiver.

23 **13. RETENTION OF JURISDICTION**

24 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
25 Consent Judgment.

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

2 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
3 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
4 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

6 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
7 against an entity that is not Settling Defendant on terms that are different than those contained in  
8 this Consent Judgment.

9 **16. EXECUTION IN COUNTERPARTS**

10 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
11 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
12 constitute one document.

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**IT IS SO ORDERED, ADJUDGED,**

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**AND DECREED**

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

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Judge of the Superior Court

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**IT IS SO STIPULATED:**

Dated: <u>5 March</u> , 2018	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>  _____ Signature <u>CHARLIE PIZARRO</u> _____ Printed Name <u>ASSOCIATE DIRECTOR</u> _____ Title
Dated: _____, 2018	<b>D.F. STAUFFER BISCUIT CO., INC.</b>  _____ Signature  _____ Printed Name  _____ Title

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**IT IS SO STIPULATED:**

Dated: _____, 2018	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>  _____ Signature  _____ Printed Name  _____ Title
Dated: <u>March 1</u> , 2018	<b>D.F. STAUFFER BISCUIT CO., INC.</b>  <u>Ronald E Fink</u> _____ Signature  <u>RONALD E FINK</u> _____ Printed Name  <u>COO</u> _____ Title

Covered Products

GINGER SNAPS

EXHIBIT "A"

Ginger Snap Cookies manufactured, distributed, shipped, sold or offered for sale by Settling Defendant, D. F. Stauffer Biscuit Co., Inc., including, but not limited to, the following:

1. Stauffer's Original Recipe Ginger Snaps, including but not limited to SKU No. 0-72320-12442-1; and
2. Great Value Ginger Snaps, including but not limited to SKU No. 0-78742-06336-2.