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

CENTER FOR ENVIRONMENTAL HEALTH,)	Case No. RG 17-851470
)	
Plaintiff,)	[PROPOSED] CONSENT JUDGMENT
)	AS TO HERR FOODS
v.)	INCORPORATED
)	
SNACK INNOVATIONS INC., <i>et al.</i> ,)	
)	
Defendants.)	
)	
)	
)	

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, including Sliced Chips and Extruded Products (as defined below), manufactured, sold, distributed, or offered for sale by the Settling Defendant.

1.3 “**Sliced Chips**” means sliced potato chips and sliced sweet potato chips.

1.4 “**Extruded Products**” means all Covered Products other than Sliced Chips. It is the Parties’ intent that the Extruded Products referenced in this Consent Judgment are the kind of

1 products falling within Type 4 in the “extruded, pellet, and baked products” category in the Consent
2 Judgment as to Defendant Snak King Corporation, entered August 31, 2011, in *People v. Snyder’s*
3 *of Hanover, et al.*, Alameda County Superior Court Case No. RG 09-455286.¹

4 1.5 “**Effective Date**” means the date on which notice of entry of this Consent Judgment
5 by the Court is served upon Settling Defendant.

6 1.6. “**Lot**” refers to all units of Covered Products manufactured during the same
7 manufacturing run at the same manufacturing facility as determined by reference to the alpha-
8 numeric code on the packaging of the units.

9 **2. INTRODUCTION**

10 2.1 The Parties to this Consent Judgment are the Center for Environmental Health, a
11 California non-profit corporation (“**CEH**”), and Herr Foods Incorporated (“**Settling Defendant**”).
12 CEH and Settling Defendant (the “**Parties**”) enter into this Consent Judgment to settle certain
13 claims asserted by CEH against Settling Defendant as set forth in the Complaint.

14 2.2 On or about January 12, 2017, CEH provided a 60-day Notice of Violation of
15 Proposition 65 to the California Attorney General, to the District Attorneys of every county in
16 California, to the City Attorneys of every California city with a population greater than 750,000,
17 and to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing
18 persons to acrylamide contained in Covered Products without first providing a clear and reasonable
19 Proposition 65 warning.

20 2.3 Settling Defendant is a corporation that manufactures, sells, distributes, or offers for
21 sale Covered Products that are sold in the State of California or has done so in the past.

22 2.4 On March 2, 2017, CEH filed the original complaint in the above-captioned matter.
23 On April 3, 2017, CEH filed the operative Complaint, naming Settling Defendant as a defendant.

24 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
26

27 _____
28 ¹ These products are referred to as “Group C, Type 4” products in Exhibit A to the Snak King Consent Judgment, which
is available on the Attorney General’s website at <https://oag.ca.gov/prop65/litigation>.

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

6 2.6 Nothing in this Consent Judgment is or shall be construed as an admission by the
7 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with
8 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
9 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
10 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any
11 other pending or future legal proceedings. This Consent Judgment is the product of negotiation and
12 compromise and is accepted by the Parties solely for purposes of settling, compromising, and
13 resolving disputed issues.

14 **3. REFORMULATION LEVELS**

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

21 3.1.1 For Sliced Chips:

22 3.1.1.1 The average acrylamide concentration shall not exceed 281 parts
23 per billion (“ppb”) by weight (the “Sliced Chips Average Level”). The Sliced Chips Average Level
24 is determined by the Settling Defendant randomly selecting and testing at least 1 sample each from
25 5 different Lots of a particular type of Covered Product that is a Sliced Chip (or the maximum
26 number of Lots available for testing if less than 5) during a testing period of at least 60 days.

1 3.1.1.2 The acrylamide concentration of any individual unit of Sliced
2 Chips shall not exceed 350 ppb by taking a composite sample from the individual unit being tested
3 (the “Sliced Chips Unit Level”).

4 3.1.2 For Extruded Products:

5 3.1.2.1 The average acrylamide concentration shall not exceed 350 ppb
6 by weight (the “Extruded Products Average Level”). The Extruded Products Average Level is
7 determined by the Settling Defendant randomly selecting and testing at least 1 sample each from 5
8 different Lots of a particular type of Covered Product that is an Extruded Product (or the maximum
9 number of Lots available for testing if less than 5) during a testing period of at least 60 days.

10 3.1.2.2 The acrylamide concentration of any individual unit of Extruded
11 Products shall not exceed 490 ppb by taking a composite sample from the individual unit being
12 tested (the “Extruded Products Unit Level”).

13 3.2 **Alternative Compliance.** As an alternative to meeting the Reformulation Levels,
14 Settling Defendant may sell Covered Products that do not meet the Reformulation Levels provided
15 that such sales made after the Effective Date are only to entities to whom Settling Defendant has
16 provided written notice to that the Covered Products are not labeled for sale in California.

17 **4. ENFORCEMENT**

18 4.1 **General Enforcement Provisions.** CEH may, by motion or application for an order
19 to show cause before this Court, enforce the terms and conditions contained in this Consent
20 Judgment. Any action brought by CEH to enforce alleged violations of Section 3.1 by Settling
21 Defendant shall be brought exclusively pursuant to this Section 4, and be subject to the meet and
22 confer requirement of Section 4.2.4 if applicable.

23 4.2 **Enforcement of Reformulation Commitment.**

24 4.2.1 Notice of Violation. In the event that CEH purchases a unit of a Covered
25 Product in California with a best-by or sell-by (or equivalent) date or other code that reflects that the
26 Covered Product was manufactured on or after the Effective Date, and CEH obtains laboratory test
27 results showing the unit of Covered Product that CEH purchased has an acrylamide level exceeding
28 the applicable Unit Level, CEH may issue a Notice of Violation pursuant to this Section.

1 4.2.2 Service of Notice of Violation and Supporting Documentation.

2 4.2.2.1 Subject to Section 4.2.1, the Notice of Violation shall be sent to the
3 person(s) identified in Section 8.2 to receive notices for Settling Defendant, and must be served
4 within sixty (60) days of the later of the date the unit of Covered Product at issue was purchased or
5 otherwise acquired by CEH or the date that CEH can reasonably determine that the unit of Covered
6 Product at issue was sold or offered for sale by Settling Defendant, provided, however, that CEH
7 may have up to an additional sixty (60) days to send the Notice of Violation if, notwithstanding
8 CEH's good faith efforts, the test data required by Section 4.2.2.2 below cannot be obtained by
9 CEH from its laboratory before expiration of the initial sixty (60) day period.

10 4.2.2.2 The Notice of Violation shall, at a minimum, set forth: (a) the date the
11 unit of Covered Product at issue was purchased; (b) the location at which the unit of Covered
12 Product at issue was purchased; (c) a description of the Covered Product giving rise to the alleged
13 violation, including the name and address of the retail location from which the sample was obtained
14 and pictures of the product packaging from all sides, which identifies the product Lot; and (d) all
15 test data obtained by CEH regarding the unit of Covered Product at issue and supporting
16 documentation sufficient for validation of the test results, including any laboratory reports, quality
17 assurance reports, and quality control reports associated with testing of the unit of Covered Product.

18 4.2.3 Notice of Election of Response. No more than thirty (30) days after
19 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to
20 CEH stating whether it elects to contest the allegations contained in the Notice of Violation
21 ("**Notice of Election**"). Except as otherwise provided herein, failure to provide a Notice of Election
22 within thirty (30) days of effectuation of service of a Notice of Violation shall be deemed an
23 election to contest the Notice of Violation. Settling Defendant may have up to an additional sixty
24 (60) days to elect if, notwithstanding Settling Defendant's good faith efforts, Settling Defendant is
25 unable to verify the test data provided by CEH before expiration of the initial thirty (30) day period.

26 4.2.3.1 If a Notice of Violation is contested, the Notice of Election shall
27 include all documents upon which Settling Defendant is relying to contest the alleged violation,
28 including any available acrylamide testing data regarding the Covered Product at issue. If Settling

1 Defendant or CEH later acquires additional test or other data regarding the alleged violation during
2 the meet and confer period described in Section 4.2.4, it shall notify the other Party and promptly
3 provide all such data or information to that Party unless either the Notice of Violation or Notice of
4 Election has been withdrawn. The Settling Defendant will be deemed to successfully have
5 contested a Notice of Violation if, prior to receiving the Notice of Violation, Settling Defendant
6 took commercially reasonable steps to notify the retailer that sold the unit of Covered Product
7 identified in the Notice of Violation that the Covered Products at issue are not labeled for sale in
8 California and, after receipt of the Notice of Violation, has notified that retailer in writing to cease
9 selling those Covered Products from physical retail locations in California. Nothing in this
10 paragraph shall be construed as limiting the bases upon which the Settling Defendant may attempt
11 to challenge a Notice of Violation.

12 4.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and Settling
13 Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of
14 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw the
15 original Notice of Election contesting the violation and serve a new Notice of Election to not
16 contest the violation, provided, however, that, in this circumstance, the Notice of Violation shall be
17 deemed non-contested and the Settling Defendant shall pay \$2,500 in addition to any other payment
18 required under this Consent Judgment. At any time, CEH may withdraw a Notice of Violation, in
19 which case for purposes of this Section 4.2 the result shall be as if CEH never issued any such
20 Notice of Violation. If, within thirty (30) days of a Notice of Election, the Settling Defendant has
21 failed to successfully contest the Notice of Violation and no informal resolution of the Notice of
22 Violation results, CEH may file an enforcement motion or application pursuant to Section 4.1. In
23 any such proceeding, CEH may seek whatever fines, costs, penalties, attorneys' fees, or other
24 remedies are provided under this Consent Judgment for an alleged failure to comply with the
25 Consent Judgment.

26 4.2.5 Non-Contested Notices. If Settling Defendant elects to not contest the
27 allegations in a Notice of Violation, it shall undertake corrective action(s) and make payments, if
28 any, as set forth below.

1 4.2.5.1 Settling Defendant shall include in its Notice of Election a detailed
2 description with supporting documentation establishing that it has or is in the process of taking the
3 following corrective actions: (a) that the Settling Defendant has ensured all Covered Products
4 having the same Lot number as that of the unit of Covered Product identified in CEH’s Notice of
5 Violation (the “**Noticed Covered Products**”) will not be thereafter sold or offered for sale in
6 California by Settling Defendant; and (b) if Settling Defendant has reason to believe the Noticed
7 Covered Products are still offered for sale to California consumers by third-party customers, that
8 Settling Defendant has sent instructions to any such customers that offer the Noticed Covered
9 Products for sale in California to cease offering the Noticed Covered Products for sale to California
10 consumers and to return any Noticed Covered Products that the third-party customer is offering for
11 sale from a physical location in California. Settling Defendant shall keep for a period of one year
12 and make available to CEH upon reasonable notice (which shall not exceed more than one request
13 per year) for inspection and copying records of any correspondence regarding the foregoing.

14 4.2.5.2 If the Notice of Violation is based on a violation of the Unit Level for
15 a Covered Product, Settling Defendant may be excused from the recall obligation described in
16 Section 4.2.5.1 (but not the monetary payments, if any, required by this Section 4) if Settling
17 Defendant produces test results and other evidence that: (1) demonstrates that the acrylamide levels
18 found by CEH in the unit alleged to be in violation is an aberration; and (2) otherwise provides
19 reasonable assurance that the remainder of the Noticed Covered Products, aside from the unit
20 alleged to be in violation, comply with the Reformulation Levels. The Parties agree that this
21 Section 4.2.5.2 is satisfied if Settling Defendant can demonstrate that the Covered Product at issue
22 in the Notice of Violation satisfies the applicable Average Level as determined pursuant to Section
23 3.1. However, to avail itself of this provision, Settling Defendant must provide CEH with all
24 acrylamide test data in its possession, custody or control pertaining to the Covered Product at issue
25 in the Notice of Violation that was performed within the year prior to the date of the Notice of
26 Violation.

27 4.2.5.3 If there is a dispute over the sufficiency of the corrective action taken
28 by Settling Defendant under Section 4.2.5.1, or over whether Settling Defendant is excused from

1 the recall obligation under Section 4.2.5.2, Settling Defendant and CEH shall meet and confer
2 before seeking any remedy in court. In no case shall CEH issue more than one Notice of Violation
3 per manufacturing Lot of a type of Covered Product. Notwithstanding anything to the contrary,
4 CEH shall not issue more than two Notices of Violation during the first year following the Effective
5 Date.

6 4.2.5.4 If the Notice of Violation is the first, second, third, or fourth Notice of
7 Violation received by Settling Defendant under Section 4.2.1 that was not successfully contested or
8 withdrawn, then Settling Defendant shall pay \$15,000 for each Notice of Violation. If Settling
9 Defendant has received more than four (4) Notices of Violation under Section 4.2.1 that were not
10 successfully contested or withdrawn, then Settling Defendant shall pay \$25,000 for each Notice of
11 Violation. If Settling Defendant produces with its Notice of Election test data for the Covered
12 Product that: (i) was conducted prior to the date CEH served the Notice of Violation at issue; (ii)
13 was conducted on the same or same type of Covered Product; and (ii) demonstrates acrylamide
14 levels below the applicable Unit Level, then any payment under this Section shall be reduced by
15 100 percent (100%) for the first Notice of Violation for the Covered Product, by seventy-five
16 percent (75%) for the second Notice of Violation for the Covered Product, and by fifty percent
17 (50%) for any subsequent Notice of Violation for the Covered Product. If Settling Defendant is
18 excused from the recall obligation pursuant to Section 4.2.5.2, then Settling Defendant shall pay
19 \$2,500 for that Notice of Violation. Settling Defendant can successfully contest a Notice of
20 Violation by producing with its Notice of Election a copy of correspondence dated before the date
21 of the purchase that resulted in the Notice of Violation demonstrating its compliance with Section
22 3.2 as to its direct customers of the same type of Covered Product at issue in the Notice. In no case
23 shall Settling Defendant be obligated to pay more than \$100,000 for uncontested Notices of
24 Violation in any calendar year irrespective of the total number of Notices of Violation issued.

25 4.2.5.5 CEH shall hold the Settling Defendant solely responsible pursuant to
26 the terms and conditions of this Consent Judgment and shall take no enforcement, legal, or other
27 action against a Downstream Defendant Releasee (as that term is defined below) arising from or
28 relating to the Downstream Defendant Releasee's alleged exposure of consumers to acrylamide

1 arising from the sale of the Covered Product at issue in a Notice of Violation in either of the
2 following circumstances: (a) the Settling Defendant receives the Notice of Violation, elects not to
3 contest the Notice, takes any corrective action required by this Section 4, and then also pays any
4 civil penalties due under this Section 4; or (b) the Settling Defendant receives the Notice of
5 Violation, initially elects to contest the Notice but then withdraws the contest, takes any corrective
6 action required by this Section 4, and then also pays any civil penalties due under this Section 4.

7 4.2.6 Payments. Any payments under Section 4.2 shall be made by check
8 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a
9 Notice of Election triggering a payment and shall be used as reimbursement for costs for
10 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse attorneys’
11 fees and costs incurred in connection with these activities.

12 4.3 **Repeat Violations.** If, in any two (2) year period, Settling Defendant has received
13 four (4) or more Notices of Violation concerning the same type of Covered Product that CEH did
14 not withdraw or that the Settling Defendant contested but failed to successfully contest, then, at
15 CEH’s option, CEH may seek whatever fines, costs, penalties, attorneys’ fees, or other remedies
16 that are provided by law for failure to comply with the Consent Judgment. Prior to seeking such
17 relief, CEH shall meet and confer with Settling Defendant for at least thirty (30) days to determine
18 if Settling Defendant and CEH can agree on measures that Settling Defendant can undertake to
19 prevent future alleged violations. For purposes of this Section, a “type” of a Covered Product is an
20 individual SKU of Covered Products.

21 **5. PAYMENTS**

22 5.1 **Payments by Settling Defendant.** Within ten (10) business days of the Effective
23 Date, Settling Defendant shall pay the total sum of \$120,000 as a settlement payment as further set
24 forth in this Section.

25 5.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall
26 be paid in four (4) separate checks in the amounts specified below and delivered as set forth below.
27 Any material failure by Settling Defendant to comply with the payment terms herein shall be
28 subject to a stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each day

1 the full payment is not received after the applicable payment due date set forth in Section 5.1. The
2 late fees required under this Section shall be recoverable, together with reasonable attorneys' fees,
3 in an enforcement proceeding brought pursuant to Section 3 of this Consent Judgment. The funds
4 paid by Settling Defendant shall be allocated as set forth below between the following categories
5 and made payable as follows:

6 5.2.1 \$20,905 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).
7 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §
8 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
9 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment
10 for \$15,678.75 shall be made payable to OEHHA and associated with taxpayer identification
11 number 68-0284486. This payment shall be delivered as follows:

12 For United States Postal Service Delivery:

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

18 For Non-United States Postal Service Delivery:

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

24 The CEH portion of the civil penalty payment for \$5,226.25 shall be made
25 payable to the Center for Environmental Health and associated with taxpayer identification number
26 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
27 Francisco, CA 94117.

28 5.2.2 \$15,675 as an Additional Settlement Payment ("ASP") to CEH pursuant to
Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH
intends to place these funds in CEH's Toxics in Food Fund and use them to support CEH programs
and activities that seek to educate the public about acrylamide and other toxic chemicals in food, to
work with the food industry and agriculture interests to reduce exposure to acrylamide and other

1 toxic chemicals in food, and to thereby reduce the public health impacts and risks of exposure to
2 acrylamide and other other toxic chemicals in food sold in California. CEH shall obtain and
3 maintain adequate records to document that ASPs are spent on these activities and CEH agrees to
4 provide such documentation to the Attorney General within thirty days of any request from the
5 Attorney General. The payment pursuant to this Section shall be made payable to the Center for
6 Environmental Health and associated with taxpayer identification number 94-3251981. This
7 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
8 94117.

9 5.2.3 \$83,420 as a reimbursement of a portion of CEH’s reasonable attorneys’
10 fees and costs. The attorneys’ fees and cost reimbursement shall be made payable to the Lexington
11 Law Group and associated with taxpayer identification number 94-3317175. This payment shall be
12 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

13 **6. MODIFICATION AND DISPUTE RESOLUTION**

14 6.1 **Modification.** This Consent Judgment may be modified from time to time by
15 express written agreement of the Parties, with the approval of the Court and prior notice to the
16 Attorney General’s Office, or by an order of this Court upon motion and prior notice to the Attorney
17 General’s Office and in accordance with law.

18 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
19 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to modify
20 the Consent Judgment.

21 **7. CLAIMS COVERED AND RELEASED**

22 7.1 Provided that Settling Defendant makes the payments required under Section 5
23 hereof, this Consent Judgment is a full, final, and binding resolution between CEH on behalf of
24 itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities
25 that are under common ownership, directors, officers, employees, agents, shareholders, successors,
26 assigns, and attorneys (“**Defendant Releasees**”), and all entities and individuals to which Settling
27 Defendant directly or indirectly distributes or sells Covered Products, including but not limited to
28 distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees (“**Downstream**

1 **Defendant Releasees**”), of any violation of Proposition 65 based on alleged exposure to acrylamide
2 contained in Covered Products that were purchased, manufactured, distributed or sold by Settling
3 Defendant prior to the Effective Date.

4 7.2 Provided that Settling Defendant makes the payments required under Section 5
5 hereof, CEH, for itself, its agents, successors and assigns, releases, waives, and forever releases
6 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream
7 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or common
8 law claims (whether known or unknown) relating to or arising from the failure to warn about
9 exposure to acrylamide in Covered Products manufactured, distributed or sold by Settling
10 Defendant prior to the Effective Date.

11 7.3 Provided that Settling Defendant makes the payments required under Section 5
12 hereof, compliance with the terms of this Consent Judgment by Settling Defendant shall constitute
13 compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and Downstream
14 Defendant Releasees with respect to any alleged failure to warn about acrylamide in Covered
15 Products after the Effective Date.

16 **8. PROVISION OF NOTICE**

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

19 Howard Hirsch
20 Lexington Law Group
21 503 Divisadero Street
22 San Francisco, CA 94117
23 hhirsch@lexlawgroup.com

24 8.2 When Settling Defendant is entitled to receive any notice under this Consent
25 Judgment, the notice shall be sent by first class and electronic mail to:

26 Jason Confair
27 Kegel Kelin Almy & Lord LLP
28 24 North Lime Street
Lancaster, PA 17602
confair@kkallaw.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 become effective upon the date signed by CEH and
3 Settling Defendant, whichever is later, provided however, that CEH shall prepare and file a Motion
4 for Approval of this Consent Judgment and Settling Defendant shall support entry of this Consent
5 Judgment by the Court.

6 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
7 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose other
8 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 **12. ENTIRE AGREEMENT**

17 12.1 This Consent Judgment contains the sole and entire agreement and understanding of
18 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
19 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
20 therein. There are no warranties, representations, or other agreements between the Parties except as
21 expressly set forth herein. No representations, oral or otherwise, express or implied, other than
22 those specifically referred to in this Consent Judgment have been made by any Party hereto. No
23 other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed
24 to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced
25 herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the
26 extent that they are expressly incorporated herein. No supplementation, modification, waiver, or
27 termination of this Consent Judgment shall be binding unless executed in writing by the Party to be
28 bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or

1 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such
2 waiver constitute a continuing waiver.

3 **13. RETENTION OF JURISDICTION**

4 13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent
5 Judgment.

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

7 14.1 Each Party represents that the signatory who signs this Consent Judgment on behalf
8 of the Party is fully authorized by the Party to stipulate to this Consent Judgment and to enter into
9 and execute the Consent Judgment on behalf of the Party and to legally bind that Party.

10 **15. OTHER SETTLEMENTS**

11 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
12 against an entity that is not Settling Defendant on terms that are different from those contained in
13 this Consent Judgment.

14 15.2 Settling Defendant may move to modify this Consent Judgment to substitute higher
15 reformulation levels than those specified in Section 3 that CEH agrees in a future consent judgment
16 are applicable to sliced potato chips, sliced sweet potato chips, or extruded potato chip products.
17 CEH agrees not to oppose any motion for modification by Settling Defendant under Section 15.2.

18 **16. EXECUTION IN COUNTERPARTS**

19 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
20 means of facsimile or portable document format (pdf), which taken together shall be deemed to
21 constitute one document.

22
23 **IT IS SO ORDERED, ADJUDGED,
24 AND DECREED.**

25
26 Dated: _____
27 _____
28 Judge of the Superior Court

1 **IT IS SO STIPULATED:**

2
3 Dated: 30 Aug, 2018

CENTER FOR ENVIRONMENTAL HEALTH



Signature



Printed Name



Title

13 Dated: _____, 2018

HERR FOODS INCORPORATED

Signature

Printed Name

Title

1 IT IS SO STIPULATED:
2

3 Dated: _____, 2018
4
5
6

CENTER FOR ENVIRONMENTAL HEALTH

7 Signature _____
8

9 Printed Name _____
10

11 Title _____
12

13 Dated: 08/24/, 2018
14

HERR FOODS INCORPORATED

15 Daryl E Thomas
16 Signature

17 DARYL E. THOMAS
18 Printed Name

19 SR. V.P. Sales/Marketing
20 Title
21
22