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

CENTER FOR ENVIRONMENTAL HEALTH,)	Case No. RG 17-870238
)	
Plaintiff,)	[PROPOSED] AMENDED CONSENT
)	JUDGMENT AS TO OLD LYME
v.)	GOURMET COMPANY
)	
GOYA FOODS, INC., <i>et al.</i> ,)	
)	
Defendants.)	
)	
)	

Upon entry, this Amended Consent Judgment supersedes in its entirety the Consent Judgment entered in this case on November 14, 2018 as to Old Lyme Gourmet Company (the “Consent Judgment”). Until this Amended Consent Judgment is entered by the Court, the Consent Judgment shall remain in effect.

1. DEFINITIONS

- 1.1 The “Complaint” means the operative complaint in the above-captioned matter.
- 1.2 “Compliance Date” shall mean January 1, 2020.

1 1.3 “Covered Products” means fried or baked potato or sweet potato based snack food
2 products, including sliced Potato Chips (as defined below) and snack food products containing
3 potato or sweet potato flour (such as extruded vegetable chips, vegetable sticks, and vegetable
4 straws). An initial list of the Covered Products divided by Potato Chips and Extruded Products is
5 attached as Exhibit A hereto.

6 1.4 “Potato Chips” means sliced potato chips. It is the Parties’ intent that the Potato
7 Chips referenced in this Amended Consent Judgment are the kind of products falling within in
8 the “potato chip products” category in the Consent Judgment as to Defendant Frito-Lay, Inc.,
9 entered August 1, 2008, in *People v. Frito-Lay, Inc., et al.*, Los Angeles County Superior Court
10 Case No. BC 338956.¹

11 1.5 “Extruded Products” means all Covered Products other than Potato Chips. It is the
12 Parties’ intent that the Extruded Products referenced in this Amended Consent Judgment are the
13 kind of products falling within Type 4 in the “extruded, pellet, and baked products” category in
14 the Consent Judgment as to Defendant Snak King Corporation, entered August 31, 2011, in
15 *People v. Snyder’s of Hanover, et al.*, Alameda County Superior Court Case No. RG 09-455286.²

16 1.6 “Effective Date” means the date on which notice of entry of this Amended
17 Consent Judgment by the Court is served upon Settling Defendant.

18 **2. INTRODUCTION**

19 2.1 The Parties to this Amended Consent Judgment are the Center for Environmental
20 Health, a California non-profit corporation (“CEH”), and Old Lyme Gourmet Company
21 (“Settling Defendant”). CEH and Settling Defendant (the “Parties”) enter into this Amended
22 Consent Judgment to settle certain claims asserted by CEH against Settling Defendant as set forth
23 in the Complaint in the above-captioned matter.

24 2.2 On or about January 12, 2017, CEH provided a 60-day Notice of Violation of
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26 ¹ Examples of these products are found in Exhibit A to the Frito-Lay Consent Judgment.

27 ² 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 Proposition 65 to the California Attorney General, to the District Attorneys of every county in
2 California, to the City Attorneys of every California city with a population greater than 750,000,
3 and to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing
4 persons to acrylamide contained in Covered Products without first providing a clear and
5 reasonable Proposition 65 warning.

6 2.3 Settling Defendant is a corporation or other business entity that manufactures,
7 distributes, sells, or offers for sale Covered Products that are sold in the State of California or has
8 done so in the past.

9 2.4 On August 3, 2017, CEH filed the original complaint in the above-captioned
10 matter, naming Settling Defendant as an original defendant. On August 17, 2017, CEH filed the
11 Complaint.

12 2.5 For purposes of this Amended Consent Judgment only, the Parties stipulate that
13 this Court has jurisdiction over the allegations of violations contained in the operative Complaint
14 and personal jurisdiction over Settling Defendant as to the acts alleged in the operative
15 Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to
16 enter and enforce this Amended Consent Judgment as a full and final resolution of all claims
17 which were or could have been raised in the operative Complaint based on the facts alleged
18 therein with respect to Covered Products manufactured, distributed, and/or sold by Settling
19 Defendant.

20 2.6 Nothing in this Amended Consent Judgment is or shall be construed as an
21 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall
22 compliance with the Amended Consent Judgment constitute or be construed as an admission by
23 the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this
24 Amended Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or
25 defense the Parties may have in any other pending or future legal proceedings. This Amended
26 Consent Judgment is the product of negotiation and compromise and is accepted by the Parties
27 solely for purposes of settling, compromising, and resolving issues disputed in this Action.

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1 **3. INJUNCTIVE RELIEF**

2 **3.1 Reformulation of Covered Products.** Upon the Compliance Date, Settling
3 Defendant shall not purchase, manufacture, ship, sell, or offer for sale Covered Products that will
4 be sold or offered for sale in California that exceed the following acrylamide concentration levels
5 (the “Reformulation Levels”), such concentration to be determined by use of a test performed by
6 an accredited laboratory using either GC/MS (Gas Chromatograph/Mass Spectrometry), LC-
7 MS/MS (Liquid Chromatograph-Mass Spectrometry), or any other testing method agreed upon
8 by the Parties:

9 3.1.1 For Sliced Potato Chips:

10 3.1.1.1 The average acrylamide concentration shall not exceed 281 parts
11 per billion (“ppb”) by weight (the “Potato Chips Average Level”). The Potato Chips Average
12 Level is determined by randomly selecting and testing at least 1 sample each from 5 different lots
13 of a particular type of Covered Product that is a Sliced Potato Chip (or the maximum number of
14 lots available for testing if less than 5) during a testing period of at least 60 days.

15 3.1.1.2 The acrylamide concentration of any individual unit of Sliced
16 Potato Chips shall not exceed 350 ppb by weight, based on a representative composite sample
17 taken from the individual unit being tested (the “Potato Chips Unit Level”).

18 3.1.2 For Extruded Products:

19 3.1.2.1 The average acrylamide concentration shall not exceed 350 ppb by
20 weight (the “Extruded Products Average Level”). The Extruded Products Average Level is
21 determined by randomly selecting and testing at least 1 sample each from 5 different lots of a
22 particular type of Covered Product that is an Extruded Product (or the maximum number of lots
23 available for testing if less than 5) during a testing period of at least 60 days.

24 3.1.2.2 The acrylamide concentration of any individual unit of Extruded
25 Products shall not exceed 490 ppb by weight, based on a representative composite sample taken
26 from the individual unit being tested (the “Extruded Products Unit Level”).

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1 3.2 **Clear and Reasonable Warnings.** A Covered Product purchased, manufactured,
2 shipped, sold or offered for sale by Settling Defendant may, as an alternative to meeting the
3 Reformulation Levels set forth in Section 3.1, be sold or offered for sale in California as of the
4 Compliance Date with a Clear and Reasonable Warning that complies with the provisions of this
5 Section 3.2. A Clear and Reasonable Warning may only be provided for Covered Products that
6 Settling Defendant reasonably believes do not meet the Reformulation Levels. A Clear and
7 Reasonable Warning under this Agreement shall state:

8 **WARNING:** Consuming this product can expose you to acrylamide, which is known to
9 the State of California to cause cancer. For more information go to
10 www.P65Warnings.ca.gov/food.

11 The word “**WARNING**” shall be displayed in all capital letters and bold print. This warning
12 statement shall be prominently displayed on the Covered Product, on the packaging of the
13 Covered Product, or on a placard or sign provided that the statement is displayed with such
14 conspicuousness, as compared with other words, statements or designs as to render it likely to be
15 read and understood by an ordinary individual prior to sale. If the warning statement is displayed
16 on the Covered Product’s label, it must be set off from other surrounding information and
17 enclosed in a text box. If the warning statement is displayed on a placard or sign where the
18 Covered Product is offered for sale, the warning placard or sign must enable an ordinary
19 individual to easily determine which specific Covered Products the warning applies to, and to
20 differentiate between that Covered Product and other products to which the warning statement
21 does not apply. For internet, catalog or any other sale where the consumer is not physically
22 present, the warning statement shall be displayed in such a manner that it is likely to be read and
23 understood by an ordinary individual prior to the authorization of or actual payment.

24 **4. ENFORCEMENT**

25 4.1 **General Enforcement Provisions.** CEH may, by motion or application for an
26 order to show cause before this Court, enforce the terms and conditions contained in this
27 Amended Consent Judgment. Any action to enforce alleged violations of Section 3 by Settling
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1 Defendant shall be brought exclusively pursuant to this Section 4, and be subject to the meet and
2 confer requirement of Section 4.2.4 if applicable.

3 4.2 **Enforcement of Reformulation Commitment.**

4 4.2.1 Notice of Violation. In the event that CEH purchases a Covered Product
5 in California that was manufactured, distributed or sold by Settling Defendant with a best-by or
6 sell-by (or equivalent) date or other code that reflects that the Covered Product was manufactured
7 on or after the Compliance Date, for which CEH has laboratory test results showing that the
8 Covered Product has an acrylamide level exceeding the Unit Level, and which lacks a Clear and
9 Reasonable Warning that complies with Section 3.2, CEH may issue a Notice of Violation
10 pursuant to this Section. Provided, however, CEH may not issue any Notice of Violation if the
11 packaging of the Covered Product is marked or labeled with the statement “Not for Sale in
12 California” or substantially similar language as long as such statement is prominently placed
13 upon such Covered Product’s label or other labeling as compared with other words or statements
14 on the label or labeling as to render it likely to be read and understood by an ordinary individual
15 under customer conditions of purchase or use. If Settling Defendants mark or label a Covered
16 Product with such a statement, Settling Defendants shall include a letter to their retailer or
17 distributor customer notifying the customer that the Covered Product may not be sold in
18 California.

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 Product at issue was purchased or
23 otherwise acquired by CEH or the date that CEH can reasonably determine that the Covered
24 Product at issue was 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 Product was purchased; (b) the location at which the Covered Product was
5 purchased; (c) a description of the Covered Product giving rise to the alleged violation, including
6 the name and address of the retail entity from which the sample was obtained and pictures of the
7 product packaging from all sides, which identifies the product lot; and (d) all test data obtained
8 by CEH regarding the Covered Product and supporting documentation sufficient for validation of
9 the test results, including any laboratory reports, quality assurance reports, and quality control
10 reports associated with testing of the Covered Product.

11 4.2.3 Notice of Election of Response. No more than thirty (30) 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 thirty (30) 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 thirty (30) 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 thirty (30) 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 Amended Consent Judgment. At any time,
4 CEH may withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the
5 result shall be as if CEH never issued any such Notice of Violation. If no informal resolution of a
6 Notice of Violation results within thirty (30) days of a Notice of Election to contest, CEH may
7 file an enforcement motion or application pursuant to Section 4.1. In any such proceeding, CEH
8 may seek whatever fines, costs, penalties, attorneys' fees, or other remedies are provided by law
9 for an alleged failure to comply with the Amended 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 be thereafter sold in California or offered for sale to California customers by Settling
19 Defendant and that Settling Defendant has sent instructions to any retailers or customers that offer
20 the Noticed Covered Products for sale to cease offering the Noticed Covered Products for sale to
21 California consumers and to return all such Noticed Covered Products to Settling Defendant.
22 Settling Defendant shall keep for a period of one year and make available to CEH upon
23 reasonable notice (which shall not exceed more than one request per year) for inspection and
24 copying records of any correspondence regarding the foregoing. If there is a dispute over the
25 corrective action, Settling Defendant and CEH shall meet and confer before seeking any remedy
26 in court. In no case shall CEH issue more than one Notice of Violation per manufacturing lot of a
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1 type of Covered Product, nor shall CEH issue more than two Notices of Violation in the first year
2 following the Compliance Date.

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

17 4.2.6 Payments. Any payments under Section 4.2 shall be made by check
18 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a
19 Notice of Election triggering a payment and shall be used as reimbursement for costs for
20 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse
21 attorneys’ fees and costs incurred in connection with these activities.

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

3 **5. PAYMENTS**

4 5.1 **Payments by Settling Defendant.** In addition to the monetary amounts
5 previously paid pursuant to the original Consent Judgment, within ten (10) calendar days of the
6 Effective Date, Settling Defendant shall pay the total sum of \$45,000 as a settlement payment as
7 further set forth in this Section.

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

17 5.2.1 \$15,975 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).
18 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §
19 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
20 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
21 payment for \$11,981.25 shall be made payable to OEHHA and associated with taxpayer
22 identification number 68-0284486. This payment shall be delivered as follows:

23 For United States Postal Service Delivery:

24 Attn: Mike Gyurics
25 Fiscal Operations Branch Chief
26 Office of Environmental Health Hazard Assessment
27 P.O. Box 4010, MS #19B
28 Sacramento, CA 95812-4010

1 For Non-United States Postal Service Delivery:
2 Attn: Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 1001 I Street, MS #19B
6 Sacramento, CA 95814

7 The CEH portion of the civil penalty payment for \$3,993.75 shall be made
8 payable to the Center for Environmental Health and associated with taxpayer identification
9 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
10 Street, San Francisco, CA 94117.

11 5.2.2 \$11,975 as an Additional Settlement Payment (“ASP”) to CEH pursuant
12 to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204.
13 CEH intends to restrict use of the ASPs received from this Amended Consent Judgment to the
14 following purposes: the funds will be placed in CEH’s Toxics in Food Fund and used to support
15 CEH programs and activities that seek to educate the public about acrylamide and other toxic
16 chemicals in food, to work with the food industry and agriculture interests to reduce exposure to
17 acrylamide and other toxic chemicals in food, and to thereby reduce the public health impacts and
18 risks of exposure to acrylamide and other toxic chemicals in food sold in California. CEH shall
19 obtain and maintain adequate records to document that ASPs are spent on these activities and
20 CEH agrees to provide such documentation to the Attorney General within thirty (30) days of any
21 request from the Attorney General. The payment pursuant to this Section shall be made payable
22 to the Center for Environmental Health and associated with taxpayer identification number 94-
23 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
24 Francisco, CA 94117.

25 5.2.3 \$17,050 as a reimbursement of a portion of CEH’s reasonable attorneys’
26 fees and costs. The attorneys’ fees and cost reimbursement shall be made payable to the
27 Lexington Law Group and associated with taxpayer identification number 94-3317175. This
28 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
94117.

1 **6. MODIFICATION AND DISPUTE RESOLUTION**

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

6 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Amended Consent
7 Judgment shall attempt in good faith to meet and confer with all affected Parties prior to filing a
8 motion to modify the Amended Consent Judgment.

9 6.3 **Change in Proposition 65.** If Proposition 65 or its implementing regulations
10 (including but not limited to the “safe harbor no significant risk level” for acrylamide set forth at
11 Cal. Code Regs., tit. 27, section 25705, subdivision (c)(2)) are changed from their terms as they
12 exist on the date of entry of this Amended Consent Judgment in a manner that impacts the
13 Reformulation Levels, or if OEHHA takes some other final regulatory action for products similar
14 to the Covered Products in a manner that impacts the Reformulation Levels or determines that
15 warnings for acrylamide are not required for such products, then Settling Defendant may seek to
16 modify this Amended Consent Judgment to modify the Reformulation Levels. The Parties
17 recognize that the Reformulation Levels are based on a compromise of a number of issues, and
18 that a change to the “safe harbor no significant risk level” for acrylamide would not necessarily
19 entitle a Party to a modification of the terms of this Amended Consent Judgment corresponding
20 to a linear relationship with such a change.

21 **7. CLAIMS COVERED AND RELEASE**

22 7.1 Provided that Settling Defendant complies in full with its obligations under
23 Section 5 hereof, this Amended Consent Judgment is a full, final, and binding resolution between
24 CEH on behalf of itself and the public interest and Settling Defendant and its parents,
25 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
26 agents, shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities
27 to which Settling Defendant directly or indirectly distributes or sells Covered Products, including
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1 but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and
2 licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on
3 failure to warn about alleged exposure to acrylamide contained in Covered Products that were
4 sold, distributed, or offered for sale by Settling Defendant prior to the Compliance Date.

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

13 7.3 Provided that Settling Defendant complies in full with its obligations under
14 Section 5 hereof, compliance with the terms of this Amended Consent Judgment by Settling
15 Defendant shall constitute compliance with Proposition 65 by Settling Defendant, Defendant
16 Releasees, and Downstream Defendant Releasees with respect to any alleged failure to warn
17 about acrylamide in Covered Products manufactured, distributed or sold by Settling Defendant
18 after the Compliance Date.

19 **8. PROVISION OF NOTICE**

20 8.1 When CEH is entitled to receive any notice under this Amended Consent
21 Judgment, the notice shall be sent by first class and electronic mail to:

22 Howard Hirsch
23 Lexington Law Group
24 503 Divisadero Street
25 San Francisco, CA 94117
26 hhirsch@lexlawgroup.com

27 8.2 When Settling Defendant is entitled to receive any notice under this Amended
28 Consent Judgment, the notice shall be sent by first class and electronic mail to:

1 Meredith A. Jones-McKeown
2 Perkins Coie LLP
3 505 Howard Street, Suite 1000
4 San Francisco, CA 94105
5 mjonesmckeown@perkinscoie.com

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

8 **9. COURT APPROVAL**

9 9.1 This Amended Consent Judgment shall become effective upon the date signed by
10 CEH and Settling Defendant, whichever is later, provided however, that CEH shall prepare and
11 file a Motion for Approval of this Amended Consent Judgment and Settling Defendant shall
12 support entry of this Amended Consent Judgment by the Court.

13 9.2 If this Amended Consent Judgment is not entered by the Court, it shall be of no
14 force or effect and shall not be introduced into evidence or otherwise used in any proceeding for
15 any purpose other than to allow the Court to determine if there was a material breach of Section
16 9.1.

17 **10. GOVERNING LAW AND CONSTRUCTION**

18 10.1 The terms of this Amended Consent Judgment shall be governed by the laws of
19 the State of California.

20 **11. ATTORNEYS' FEES**

21 11.1 A Party who unsuccessfully brings or contests an action, motion, or application
22 arising out of this Amended Consent Judgment shall be required to pay the prevailing Party's
23 reasonable attorneys' fees and costs.

24 11.2 Nothing in this Section 11 shall preclude a Party from seeking an award of
25 sanctions pursuant to law.

26 **12. ENTIRE AGREEMENT**

27 12.1 This Amended Consent Judgment contains the sole and entire agreement and
28 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
discussions, negotiations, commitments, or understandings related thereto, if any, are hereby

1 merged herein and therein. There are no warranties, representations, or other agreements
2 between the Parties except as expressly set forth herein. No representations, oral or otherwise,
3 express or implied, other than those specifically referred to in this Amended Consent Judgment
4 have been made by any Party hereto. No other agreements not specifically contained or
5 referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.
6 Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to
7 exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated
8 herein. No supplementation, modification, waiver, or termination of this Amended Consent
9 Judgment shall be binding unless executed in writing by the Party to be bound thereby. No
10 waiver of any of the provisions of this Amended Consent Judgment shall be deemed or shall
11 constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such
12 waiver constitute a continuing waiver.

13 **13. RETENTION OF JURISDICTION**

14 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
15 Amended Consent Judgment.

16 **14. AUTHORITY TO STIPULATE TO AMENDED CONSENT JUDGMENT**

17 14.1 Each signatory to this Amended Consent Judgment certifies that he or she is fully
18 authorized by the Party he or she represents to stipulate to this Amended Consent Judgment and
19 to enter into and execute the Amended Consent Judgment on behalf of the Party represented and
20 legally to bind that Party.

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

22 15.1 Nothing in this Amended Consent Judgment shall preclude CEH from resolving
23 any claim against any other entity on terms that are different than those contained in this
24 Amended Consent Judgment. Settling Defendant may move to modify this Amended Consent
25 Judgment pursuant to Section 6 to substitute higher Reformulation Levels that CEH agrees to in a
26 future consent judgment applicable to Potato Chips or other products substantially similar to the
27 Covered Products, and CEH agrees not to oppose any such motion except for good cause shown.

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1 **16. EXECUTION IN COUNTERPARTS**

2 16.1 The stipulations to this Amended Consent Judgment may be executed in
3 counterparts and by means of facsimile or portable document format (pdf), which taken together
4 shall be deemed to constitute one document.

5

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


8

9 Dated: _____
Judge of the Superior Court

10

11 **IT IS SO STIPULATED:**

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Dated: <u>5/6</u> , 2019	CENTER FOR ENVIRONMENTAL HEALTH  _____ Signature <u>Michael Green</u> _____ Printed Name <u>CEO</u> _____ Title
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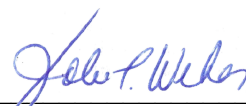
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Dated: April 30, 2019

OLD LYME GOURMET COMPANY



Signature

Jolie L. Weber

Printed Name

CEO

Title

EXHIBIT A

Potato Chips

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- Aged Cheddar Horseradish Kettle Chips
- Baked Crisps Sea Salt
- Black Truffle Kettle Chips
- Bulk Original Salted Kettle Chips
- Classic Salted Flat Chips
- Cracked Pepper Kettle Chips
- Mesquite BBQ Kettle Chips
- New York Spicy Dill Pickle Kettle Chips
- Ninja Ginger Kettle Chips
- Original Salted Kettle Chips
- Reduced Fat Lightly Salted Kettle Chips
- Rosemary and Olive Oil Kettle Chips
- Salt and Vinegar Kettle Chips
- Sour Cream and Onion Kettle Chips
- Sweet Maui Onion Kettle Chips
- Zesty Jalapeno Kettle Chips