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8	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
9	FOR THE COUNTY OF ALAMEDA		
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11	CENTER FOR ENVIRONMENTAL HEALTH,)	Case No. RG 17-870238	
12	Plaintiff,)	[PROPOSED] CONSENT JUDGMENT AS TO KSF	
13	v.)	ACQUISITION CORP.	
14	GOYA FOODS, INC., et al.,		
15	Defendants.		
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17			
18	1. DEFINITIONS		
19	1.1 The "Complaint" means the operative	e First Amended Complaint in the above-	
20	captioned matter.		
21	1.2 "Covered Products" means fried or b	paked potato or sweet potato based snack food	
22	products, including Sliced Chips and Extruded Products	ucts (as defined below). An initial list of the	
23	Covered Products, divided as to Sliced Chips and Extruded Products, is attached as Exhibit A		
24	hereto.		
25	1.3 "Sliced Chips" means sliced potato cl	hips.	
2627	1.4 "Extruded Products" means all Cover	red Products other than Sliced Chips. It is the	
28	Parties' intent that the Extruded Products referenced	in this Consent Judgment are the kind of	
∠o EPARED	1		

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

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

2. INTRODUCTION

- 2.1 The Parties to this Consent Judgment are the Center for Environmental Health, a California non-profit corporation ("CEH") and KSF Acquisition Corp. ("Settling Defendant"), on the other hand. CEH and Settling Defendant (the "Parties") enter into this Consent Judgment to settle certain claims asserted by CEH against Settling Defendant as set forth in the Complaint.
- 2.2 On or about March 20, 2017, CEH provided a 60-day Notice of Violation of Proposition 65 (the "Notice") to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000, and to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons in California to acrylamide contained in Covered Products without first providing a clear and reasonable Proposition 65 warning.
- 2.3 Settling Defendant is a corporation or other business entity that manufactures, distributes, sells, or offers for sale Covered Products that are sold in the State of California or has done so at times relevant to the Complaint.
- 2.4 On August 3, 2017, CEH filed the original complaint in the above-captioned matter, naming Settling Defendant as an original defendant. On August 17, 2017, CEH filed the operative Complaint.
- 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in

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.

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

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

3. INJUNCTIVE RELIEF

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

3.1.1 For Sliced Chips:

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

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

3.1.2 For Extruded Products:

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

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

4. ENFORCEMENT

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

4.2 Enforcement of Reformulation Commitment.

4.2.1 <u>Notice of Violation</u>. In the event that CEH purchases a Covered Product in California that was sold or offered for sale by Settling Defendant with a best-by or sell-by (or equivalent) date more than 6 months after the Compliance Date, and for which CEH has laboratory test results showing that the Covered Product exceeds the applicable Unit Level, CEH may issue a Notice of Violation pursuant to this Section.

4.2.2 <u>Service of Notice of Violation and Supporting Documentation.</u>

4.2.2.1 The Notice of Violation shall be sent to the person(s) identified in Section 8.2 to receive notices for Settling Defendant, and must be served within sixty (60) days

of the later of the date the Covered Product at issue was purchased or otherwise acquired by CEH or the date that CEH can reasonably determine that the Covered Product at issue was manufactured, shipped, sold, or offered for sale by Settling Defendant, provided, however, that CEH may have up to an additional sixty (60) days to send the Notice of Violation if, notwithstanding CEH's good faith efforts, the test data required by Section 4.2.2.2 below cannot be obtained by CEH from its laboratory before expiration of the initial sixty (60) day period.

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

4.2.3 <u>Notice of Election of Response</u>. No more than thirty (30) days after effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to CEH whether it elects to contest the allegations contained in a Notice of Violation ("Notice of Election"). Failure to provide a Notice of Election within thirty (30) days of effectuation of service of a Notice of Violation shall be deemed an election to contest the Notice of Violation. Upon notice to CEH, Settling Defendant may have up to an additional sixty (60) days to elect if, notwithstanding Settling Defendant's good faith efforts, Settling Defendant is unable to verify the test data provided by CEH before expiration of the initial thirty (30) day period.

4.2.3.1 If a Notice of Violation is contested, the Notice of Election shall include all documents upon which Settling Defendant is relying to contest the alleged violation, including all available test data. If Settling Defendant or CEH later acquires additional test or other data regarding the alleged violation during the meet and confer period described in Section

4.2.4, it shall notify the other Party and promptly provide all such data or information to the Party unless either the Notice of Violation or Notice of Election has been withdrawn.

- 4.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and Settling Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw the original Notice of Election contesting the violation and serve a new Notice of Election to not contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay \$2,500 in addition to any other payment required under this Consent Judgment. At any time, CEH may withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the result shall be as if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of Violation results within thirty (30) days of a Notice of Election to contest, CEH may file an enforcement motion or application pursuant to Section 4.1. In any such proceeding, CEH may seek whatever fines, costs, penalties, attorneys' fees, or other remedies are provided by law for an alleged failure to comply with the Consent Judgment.
- 4.2.5 <u>Non-Contested Notices</u>. If Settling Defendant elects to not contest the allegations in a Notice of Violation, it shall undertake corrective action(s) and make payments, if any, as set forth below.
- 4.2.5.1 Settling Defendant shall include in its Notice of Election a detailed description with supporting documentation of the corrective action(s) that it has undertaken or proposes to undertake to address the alleged violation. Any such correction shall, at a minimum, provide reasonable assurance that all Covered Products having the same lot number as that of the Covered Product identified in CEH's Notice of Violation (the "Noticed Covered Products") will not be thereafter sold in California or offered for sale to California customers by Settling Defendant, and that Settling Defendant has sent instructions to any retailers or customers that offer the Noticed Covered Products for sale to cease offering the Noticed Covered Products for sale to California consumers and to return all such Noticed Covered Products to Settling Defendant. Settling Defendant shall keep for a period of one year and make

available to CEH upon reasonable notice (which shall not exceed more than one request per year) for inspection and copying records of any correspondence regarding the foregoing. If there is a dispute over the corrective action, Settling Defendant and CEH shall meet and confer before seeking any remedy in court. In no case shall CEH issue more than one Notice of Violation per manufacturing lot of a type of Covered Product, nor shall CEH issue more than two Notices of Violation in the first year following the Compliance Date.

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

- 4.2.6 <u>Payments</u>. Any payments under Section 4.2 shall be made by check payable to the "Lexington Law Group" and shall be paid within thirty (30) days of service of a Notice of Election triggering a payment and shall be used as reimbursement for costs for investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse attorneys' fees and costs incurred in connection with these activities.
- 4.3 **Repeat Violations.** If Settling Defendant has received four (4) or more Notices of Violation concerning the same type of Covered Product that were not successfully contested or

Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

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

The CEH portion of the civil penalty payment for \$3,233.75 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.2 \$9,695 as an Additional Settlement Payment ("ASP") to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH intends to restrict use of the ASPs received from this Consent Judgment to the following purposes: the funds will be placed in CEH's Toxics in Food Fund and used 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 toxic chemicals in food, and to thereby reduce the public health impacts and risks of exposure to acrylamide and other toxic chemicals in food sold in California. CEH shall obtain and maintain adequate records to document that ASPs are spent on these activities and CEH agrees to provide such documentation to the Attorney General within thirty (30) days of any request from the Attorney General. The payment pursuant to this Section shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.3 \$52,370 as a reimbursement of a portion of CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175. This

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payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

MODIFICATION AND DISPUTE RESOLUTION 6.

- 6.1 **Modification.** This Consent Judgment may be modified from time to time by express written agreement of the Parties, with the approval of the Court and prior notice to the Attorney General's Office, or by an order of this Court upon motion and prior notice to the Attorney General's Office and in accordance with law.
- 6.2 Notice; Meet and Confer. Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.
- 6.3 Change in Proposition 65. If Proposition 65 or its implementing regulations (including but not limited to the "safe harbor no significant risk level" for acrylamide set forth at Cal. Code Regs., tit. 27, section 25705, subdivision (c)(2) or any "alternative risk level" adopted by regulation or court decision) are changed from their terms as they exist on the date of entry of this Consent Judgment in a manner that impacts the Reformulation Levels, or if OEHHA takes some other final regulatory action for products similar to the Covered Products in a manner that impacts the Reformulation Levels or determines that warnings for acrylamide are not required for such products, then Settling Defendant may seek to modify this Consent Judgment to modify the Reformulation Levels. The Parties recognize that the Reformulation Levels are based on a compromise of a number of issues, and that a change to the "safe harbor no significant risk level" for acrylamide would not necessarily entitle a Party to a modification of the terms of this Consent Judgment corresponding to a linear relationship with such a change.

7. CLAIMS COVERED AND RELEASE

7.1 Provided that Settling Defendant complies in full with its obligations under Section 5 hereof, this Consent Judgment is a full, final and binding resolution between CEH on behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents,

shareholders, successors, assigns, and attorneys ("Defendant Releasees"), and all entities to which Settling Defendant directly or indirectly distribute or sell Covered Products, including but not limited to distributors, wholesalers, customers, retailers (including but not limited to 99 Cents Only Stores LLC), franchisees, licensors, and licensees ("Downstream Defendant Releasees"), of any violation of Proposition 65 based on failure to warn about alleged exposure to acrylamide contained in Covered Products that were sold, distributed, or offered for sale by Settling Defendant prior to the Compliance Date.

- 7.2 Provided that Settling Defendant complies in full with its obligations under Section 5 hereof, CEH, for itself, its agents, successors and assigns, releases, waives, and forever discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any violation of Proposition 65 or any other statutory or common law claims that have been or could have been asserted by CEH individually or in the public interest regarding the failure to warn about exposure to acrylamide arising in connection with Covered Products manufactured, distributed or sold by Settling Defendant prior to the Compliance Date.
- 7.3 Provided that Settling Defendant complies in full with its obligations under Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant shall constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees and Downstream Defendant Releasees with respect to any alleged failure to warn about acrylamide in Covered Products manufactured, distributed, or sold by Settling Defendant after the Compliance Date.

8. PROVISION OF NOTICE

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

		Howard Hirsch
		Lexington Law Group 503 Divisadero Street
		San Francisco, CA 94117
		hhirsch@lexlawgroup.com
	8.2	When Settling Defendant is entitled to receive any notice under this Consent
Judgm	nent, the	e notice shall be sent by first class and electronic mail to:
		Anthony Cortez
		Greenberg Traurig, LLP 1201 K Street, Suite 1100
		Sacramento, CA 95814 cortezan@gtlaw.com
	Anv F	Party may modify the person and/or address to whom the notice is to be sent b
11		ther Party notice by first class and electronic mail.
,		This Consent Judgment shall become effective upon the date signed by CEH and
Settlin		ndant, whichever is later, provided however, that CEH shall prepare and file a
Motion for Approval of this Consent Judgment and Settling Defendant shall support entry of this		
Consent Judgment by the Court.		
	9.2	If this Consent Judgment is not entered by the Court, it shall be of no force or
effect	and sha	all not be introduced into evidence or otherwise used in any proceeding for any
purpos	se other	than to allow the Court to determine if there was a material breach of Section 9.1.
10.	GOV	ERNING LAW AND CONSTRUCTION
	10.1	The terms of this Consent Judgment shall be governed by the laws of the State of
Califo	rnia.	
11.	ATTO	DRNEYS' FEES
	11.1	A Party who unsuccessfully brings or contests an action, motion, or application
arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable		
attorneys' fees and costs.		
	11.2	Nothing in this Section 11 shall preclude a party from seeking an award of
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sanctions pursuant to law.

12. ENTIRE AGREEMENT

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

13. RETENTION OF JURISDICTION

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

14. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

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

15. NO EFFECT ON OTHER SETTLEMENTS

15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim against any other entity on terms that are different from those contained in this Consent Judgment.

1	16.	EXECUTION IN COUNTERPARTS	
2		16.1 The stipulations to this Consent Judgment may be executed in counterpa	rts and by
3	means	of facsimile or portable document format (pdf), which taken together shall be de-	emed to
4	constitu	tute one document.	
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6	IT IS S	SO ORDERED, ADJUDGED, AND	
7	DECR	REED.	
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10	Dated:		
11		Judge of the Superior Court	
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13	IT IS S	SO STIPULATED:	
14	Dated:	(CENTER FOR ENVIRONMENTAL H	IEALTH
15	2- 000 000	CENTERTOR ENVIRONMENTALIS	
16	,		
17		Signature	
18	<u> </u>	COHRLIE PIZMAC	
20		Printed Name	
20		ASSOCIATE DIRECTOR	
22		Title	
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1	Dated: <u>\\\ \</u> \\ 5_, 2018	KSF ACQUISITION CORP.
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1	EXHIBIT A – Covered Products
2	Extruded Products:
3 4	SF SB Adv BBQ Crisps 4 5 pk • SF ADV SNK MINI CRISP MESQ BB
5	SLIMFAST MESQUITE BBQ POP CRISLMFST ADV POP CRSP BBQ
6	 SLIM FAST BKD CRISPS BBQ 5PK SF CRISPS MESQUITE BBQ SLIMFAST CRISPS MSQTE BBQ BA
7	SLMFST ADV MESQ BBQ POPPE
9	 SFT SLF POP CSP MQBBQ 4-5-28 SLIMFAST POP CRISPS MESQ BBQ S/F ADV CRSPS MSQ BBQ 5PK
10	SF Adv Chips 14ct WIP • SFT SLF POP CRSPS MQBBQ 2-5-2
11	SF SB Adv SC&O Crisps 4 5 pk • SF ADV SNK MINI CRSP SR CRM O
12 13	 SLMFST ADV SOUR CRM POP C SLIMFAST SOUR CRM ONION POP C
14	 SLIMFAST CRISPS SR CRM ON BA SFT SLF POP CSP SC&O 4-5-28 G
15	SF ADV CRSPS SR CR80202S/F ADV CRSPS SR CRM 5PK
16	SF SCO POP CRISPS 5CT SF Adv BBQ Chip Indiv. SF Adv BC Chip Right Chip 24 to 10 to
17 18	SF Adv SC&Onion Bkd Chips 24ct SF BBQ BAKED CRISPS PDQ
19	CDU SF BBQ BAKE CRISPS SF Adv Crisps Variety 14ct PAL SF Adv DDO DI 16th 245 to
20	SF Adv BBQ Bkd Chip 2/5ct • SFT SLF POP CRSPS MQBBQ 2-5-2
21	SF SB Adv SC&O Crisps 5/4pk CA SF SB Adv BBQ Crisps 4 5 pk CA
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