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

CENTER FOR ENVIRONMENTAL HEALTH, ) Case No. RG 17-881957  
Plaintiff, )  
v. ) **[PROPOSED] CONSENT**  
IDAHOAN FOODS, LLC, *et al.*, ) **JUDGMENT AS TO DOLLAR TREE**  
Defendants. ) **STORES, INC.**

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**1. DEFINITIONS**

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

1.2 “Covered Products” means hash brown potato products, including but not limited to hash browns, hash brown patties, tater tots, and tater puffs, sold by The Riverside Group, LLC, Riverside Foods, LLC or their affiliates or successors. An initial list of the Covered Products is attached as Exhibit A hereto.

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

1       **2.     INTRODUCTION**

2           2.1     The Parties to this Consent Judgment are the Center for Environmental Health, a  
3     California non-profit corporation (“CEH”), on the one hand, and Dollar Tree Stores, Inc.  
4     (“Settling Defendant”), on the other hand. CEH and Settling Defendant (the “Parties”) enter into  
5     this Consent Judgment to settle certain claims asserted by CEH against Settling Defendant as set  
6     forth in the Complaint.

7           2.2     On or about July 21, 2017, CEH provided a 60-day Notice of Violation of  
8     Proposition 65 (the “Notice”) to the California Attorney General, the District Attorneys of every  
9     county in California, the City Attorneys of every California city with a population greater than  
10    750,000, and to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by  
11    exposing persons in California to acrylamide contained in Covered Products without first  
12    providing a clear and reasonable Proposition 65 warning.

13          2.3     Settling Defendant is a corporation or other business entity that manufactures,  
14    distributes, sells, or offers for sale Covered Products that are sold in the State of California or has  
15    done so at times relevant to the Complaint.

16          2.4     On November 9, 2017, CEH filed the initial complaint in the above-captioned  
17    matter, naming Settling Defendant as a defendant.

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

25          2.6     Nothing in this Consent Judgment is or shall be construed as an admission against  
26    interest by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall  
27    compliance with the Consent Judgment constitute or be construed as an admission against interest  
28    by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this

1 Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the  
2 Parties may have in any other pending or future legal proceedings. This Consent Judgment is the  
3 product of negotiation and compromise and is accepted by the Parties solely for purposes of  
4 settling, compromising, and resolving issues disputed in this action.

5 **3. INJUNCTIVE RELIEF**

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

12 **3.1.1** The average acrylamide concentration of Covered Products as when  
13 prepared per cooking instructions on the package, shall not exceed, on average, 350 parts per  
14 billion (“ppb”) by weight (the “Average Level”). The Average Level is determined by randomly  
15 selecting at least five (5) samples from five (5) different lots of Covered Products (or the  
16 maximum number of lots available for testing if less than five (5)) during a testing period of at  
17 least sixty (60) days.

18 **3.1.2** The acrylamide concentration of any individual unit (i.e. a package of the  
19 Covered Product), when prepared per cooking instructions on the package, shall not exceed 500  
20 ppb by weight (the “Unit Level”).

21 **4. ENFORCEMENT**

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

1           **4.2    Enforcement of Reformulation Commitment.**

2           4.2.1   Notice of Violation. In the event that CEH purchases a Covered Product in  
3 California that was sold or offered for sale by Settling Defendant with a best-by or sell-by (or  
4 equivalent) date more than nine (9) months after the Effective Date, and for which CEH has  
5 laboratory test results showing that the Covered Product exceeds the applicable Unit Level, CEH  
6 may issue a Notice of Violation pursuant to this Section.

7           4.2.2   Service of Notice of Violation and Supporting Documentation.

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

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

24           4.2.3   Notice of Election of Response. No more than sixty (60) days after  
25 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to  
26 CEH whether it elects to contest the allegations contained in a Notice of Violation (“Notice of  
27 Election”). Failure to provide a Notice of Election within sixty (60) days of effectuation of  
28 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.

1 Upon notice to CEH, Settling Defendant may have up to an additional sixty (60) days to elect if,  
2 notwithstanding Settling Defendant's good faith efforts, Settling Defendant is unable to verify the  
3 test data provided by CEH before expiration of the initial sixty (60) day period.

4 4.2.3.1 If a Notice of Violation is contested, the Notice of Election shall  
5 include all documents upon which Settling Defendant is relying to contest the alleged violation,  
6 including all available test data. If Settling Defendant or CEH later acquires additional test or  
7 other data regarding the alleged violation during the meet and confer period described in Section  
8 4.2.4, it shall notify the other Party and promptly provide all such data or information to the Party  
9 unless either the Notice of Violation or Notice of Election has been withdrawn.

10 4.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and Settling  
11 Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of  
12 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw  
13 the original Notice of Election contesting the violation and serve a new Notice of Election to not  
14 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay  
15 \$2,500 in addition to any other payment required under this Consent Judgment. At any time,  
16 CEH may withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the  
17 result shall be as if CEH never issued any such Notice of Violation. If no informal resolution of a  
18 Notice of Violation results within thirty (30) days of a Notice of Election to contest, CEH may  
19 file an enforcement motion or application pursuant to Section 4.1. In any such proceeding, CEH  
20 may seek whatever fines, costs, penalties, attorneys' fees, or other remedies are provided by law  
21 for an alleged failure to comply with the Consent Judgment and Settling Defendant shall reserve  
22 all of its rights to contest, dispute and defend the Notice of Violation, including all allegations  
23 therein, in the enforcement motion or application proceeding.

24 4.2.5 Non-Contested Notices. If Settling Defendant elects to not contest the  
25 allegations in a Notice of Violation, it shall undertake corrective action(s) and make payments, if  
26 any, as set forth below.

27 4.2.5.1 Settling Defendant shall include in its Notice of Election a  
28 detailed description with supporting documentation of the corrective action(s) that it has

1 undertaken or proposes to undertake to address the alleged violation. Any such correction shall,  
2 at a minimum, provide reasonable assurance that all Covered Products having the same lot  
3 number as that of the Covered Product identified in CEH's Notice of Violation (the "Noticed  
4 Covered Products") will not be thereafter sold in California or offered for sale to California  
5 customers by Settling Defendant, and that Settling Defendant has sent instructions to any retailers  
6 or customers that offer the Noticed Covered Products for sale to cease offering the Noticed  
7 Covered Products for sale to California consumers and to return all such Noticed Covered  
8 Products to Settling Defendant. Settling Defendant shall keep for a period of one year and make  
9 available to CEH upon reasonable notice (which shall not exceed more than one request per year)  
10 for inspection and copying records of any correspondence regarding the foregoing. If there is a  
11 dispute over the corrective action, Settling Defendant and CEH shall meet and confer before  
12 seeking any remedy in court. In no case shall CEH issue more than one Notice of Violation per  
13 manufacturing lot of a type of Covered Product, nor shall CEH issue more than two Notices of  
14 Violation in the first calendar year following the Effective Date.

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

1                   4.2.6 Payments. Any payments under Section 4.2 shall be made by check  
2 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a  
3 Notice of Election triggering a payment and shall be used as reimbursement for costs for  
4 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse  
5 attorneys’ fees and costs incurred in connection with these activities.

6                   4.3     **Repeat Violations.** If Settling Defendant has received four (4) or more Notices of  
7 Violation concerning the same type of Covered Product that were not successfully contested or  
8 withdrawn in any two (2) year period then, at CEH’s option, CEH may seek whatever fines, costs,  
9 penalties, attorneys’ fees, or other remedies that are provided by law for failure to comply with  
10 the Consent Judgment. Prior to seeking such relief, CEH shall meet and confer with Settling  
11 Defendant for at least thirty (30) days to determine if Settling Defendant and CEH can agree on  
12 measures that Settling Defendant can undertake to prevent future alleged violations.

13     **5.     PAYMENTS**

14                   5.1     **Payments by Settling Defendant.** Within ten (10) calendar days of the Effective  
15 Date, Settling Defendant shall pay the total sum of \$45,000 as a settlement payment as further set  
16 forth in this Section.

17                   5.2     **Allocation of Payments.** The total settlement amount shall be paid in four (4)  
18 separate checks in the amounts specified below and delivered as set forth below. Any failure by  
19 Settling Defendant to comply with the payment terms herein shall be subject to a stipulated late  
20 fee to be paid by Settling Defendant to CEH in the amount of \$100 for each day the full payment  
21 is not received after the payment due date set forth in Section 5.1. The late fees required under  
22 this Section shall be recoverable, together with reasonable attorneys’ fees, in an enforcement  
23 proceeding brought pursuant to Section 4 of this Consent Judgment. The funds paid by Settling  
24 Defendant shall be allocated as set forth below between the following categories and made  
25 payable as follows:

26                   5.2.1    \$7,620 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).  
27 The civil penalty payment shall be apportioned in accordance with Health & Safety Code  
28 § 25249.12 (25% to CEH and 75% to the State of California’s Office of Environmental Health

1 Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty  
2 payment for \$5,715 shall be made payable to OEHHA and associated with taxpayer identification  
3 number 68-0284486. This payment shall be delivered as follows:

4 For United States Postal Service Delivery:

5 Attn: Mike Gyurics  
6 Fiscal Operations Branch Chief  
7 Office of Environmental Health Hazard Assessment  
8 P.O. Box 4010, MS #19B  
9 Sacramento, CA 95812-4010

10 For Non-United States Postal Service Delivery:

11 Attn: Mike Gyurics  
12 Fiscal Operations Branch Chief  
13 Office of Environmental Health Hazard Assessment  
14 1001 I Street, MS #19B  
15 Sacramento, CA 95814

16 The CEH portion of the civil penalty payment for \$1,905 shall be made payable to  
17 the Center for Environmental Health and associated with taxpayer identification number 94-  
18 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San  
19 Francisco, CA 94117.

20 5.2.2 \$5,710 as an Additional Settlement Payment (“ASP”) to CEH pursuant to  
21 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH  
22 intends to restrict use of the ASPs received from this Consent Judgment to the following  
23 purposes: the funds will be placed in CEH’s Toxics in Food Fund and used to support CEH  
24 programs and activities that seek to educate the public about acrylamide and other toxic  
25 chemicals in food, to work with the food industry and agriculture interests to reduce exposure to  
26 acrylamide and other toxic chemicals in food, and to thereby reduce the public health impacts and  
27 risks of exposure to acrylamide and other toxic chemicals in food sold in California. CEH shall  
28 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-



1 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San  
2 Francisco, CA 94117.

3 5.2.3 \$31,670 as a reimbursement of a portion of CEH's reasonable attorneys'  
4 fees and costs. The attorneys' fees and costs reimbursement shall be made payable to the  
5 Lexington Law Group and associated with taxpayer identification number 94-3317175. This  
6 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
7 94117.

## 8 **6. MODIFICATION AND DISPUTE RESOLUTION**

9 6.1 **Modification.** This Consent Judgment may be modified from time to time by  
10 express written agreement of the Parties, with the approval of the Court and prior notice to the  
11 Attorney General's Office, or by an order of this Court upon motion and prior notice to the  
12 Attorney General's Office and in accordance with law.

13 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
14 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to  
15 modify the Consent Judgment.

## 16 **7. CLAIMS COVERED AND RELEASE**

17 7.1 This Consent Judgment is a full, final and binding resolution between CEH on  
18 behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries,  
19 affiliated entities that are under common ownership, directors, officers, employees, agents,  
20 shareholders, successors, assigns, and attorneys ("Defendant Releasees") and all entities to which  
21 Settling Defendant directly or indirectly distributes or sells Covered Products, including but not  
22 limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees  
23 (collectively "Downstream Defendant Releasees"), of any violation of Proposition 65 based on  
24 failure to warn about alleged exposure to acrylamide contained in Covered Products that were  
25 sold, distributed, or offered for sale by Settling Defendant prior to the Effective Date.

26 7.2 CEH, for itself, its agents, successors and assigns, releases, waives, and forever  
27 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream  
28 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or

1 common law claims that have been or could have been asserted by CEH individually or in the  
2 public interest regarding the failure to warn about exposure to acrylamide arising in connection  
3 with Covered Products manufactured, distributed or sold by Settling Defendant prior to the  
4 Effective Date.

5 7.3 Compliance with the terms of this Consent Judgment by Settling Defendant shall  
6 constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees and  
7 Downstream Defendant Releasees with respect to any alleged failure to warn about acrylamide in  
8 Covered Products manufactured, distributed, or sold by Settling Defendant after the Effective  
9 Date.

10 **8. PROVISION OF NOTICE**

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

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

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

20 Peg Carew Toledo  
21 Peg Carew Toledo, Law Corporation  
22 3001 Douglas Blvd., Suite 340  
23 Roseville, CA 95661  
24 peg@toledolawcorp.com

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

27 **9. COURT APPROVAL**

28 9.1 This Consent Judgment shall become effective upon the date it is entered as an  
order of the Court. 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

1 effect and shall not be introduced into evidence or otherwise used in any proceeding for any  
2 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

3 **10. GOVERNING LAW AND CONSTRUCTION**

4 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
5 California.

6 **11. ATTORNEYS' FEES**

7 11.1 A Party who unsuccessfully brings or contests an action, motion, or application  
8 arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable  
9 attorneys' fees and costs.

10 11.2 Nothing in this Section 11 shall preclude a party from seeking an award of  
11 sanctions pursuant to law.

12 **12. ENTIRE AGREEMENT**

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

27 **13. RETENTION OF JURISDICTION**

28 13.1 This Court shall retain jurisdiction of this matter to implement or modify the

1 Consent Judgment.

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

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

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

7 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
8 against any other entity on terms that are different from those contained in this Consent  
9 Judgment.

10 **16. EXECUTION IN COUNTERPARTS**

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

14  
15 **IT IS SO ORDERED, ADJUDGED, AND**  
16 **DECREED.**

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19 Dated: \_\_\_\_\_  
20 \_\_\_\_\_  
21 Judge of the Superior Court

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**IT IS SO STIPULATED:**

Dated: 18 Oct, 2018

**CENTER FOR ENVIRONMENTAL HEALTH**



Signature



Printed Name



Title

Dated: \_\_\_\_\_, 2018

**DOLLAR TREE STORES, INC.**

Signature

Printed Name

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**IT IS SO STIPULATED:**

Dated: \_\_\_\_\_, 2018

**CENTER FOR ENVIRONMENTAL HEALTH**

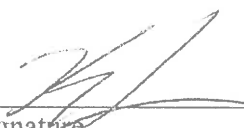
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Dated: October 15, 2018

**DOLLAR TREE STORES, INC.**

  
\_\_\_\_\_  
Signature

Keith Zanni  
\_\_\_\_\_  
Printed Name

Asst. Gen Counsel  
\_\_\_\_\_  
Title

**EXHIBIT A**

Winding River Farms Shredded Hash Browns