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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,	)	<b>[PROPOSED] CONSENT JUDGMENT</b>
	)	<b>AS TO MICHAEL FOODS, INC.</b>
v.	)	
	)	
IDAHOAN FOODS, LLC, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

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**1. DEFINITIONS**

- 1.1 The “Complaint” means the operative Complaint in the above-captioned matter.
- 1.2 “Compliance Date” shall mean the date that is six months after the Effective Date.
- 1.3 “Covered Products” shall mean hash brown potato products, including but not limited to hash browns, hash brown patties, tater tots, and tater puffs sold or offered for sale by Settling Defendant to California consumers. Specific non-exclusive examples of Covered Products sold in the past by Settling Defendant are listed on Exhibit A.

1           1.4     “Effective Date” means the date on which notice of entry of this Consent Judgment  
2 is by the Court is served upon Settling Defendant.

3           **2.     INTRODUCTION**

4           2.1     The Parties to this Consent Judgment are the Center For Environmental Health  
5 (“CEH”), a California non-profit corporation, and Michael Foods, Inc. (“Settling Defendant”).  
6 CEH and Settling Defendants (the “Parties”) enter into this Consent Judgment to settle certain  
7 claims asserted by CEH against Settling Defendant as set forth in Complaint.

8           2.2     On July 21, 2017, CEH issued a 60-day Notice of Violation of Proposition 65 to the  
9 California Attorney General, to the District Attorneys of every county in California, to the City  
10 Attorneys of every California city with a population greater than 750,000, and to Settling  
11 Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons to  
12 acrylamide in excess of the warning threshold when using Covered Products under the provided  
13 directions for use, without first providing a clear and reasonable Proposition 65 warning.

14           2.3     Settling Defendant is a corporation or other business entity that employs ten or more  
15 people and manufactures, distributes, sells, or offers for sale Covered Products that are sold in the  
16 State of California or has done so in the past.

17           2.4     On November 9, 2017, CEH filed the Complaint, naming Settling Defendants as  
18 defendants in the action.

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

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

### 7 **3. INJUNCTIVE RELIEF**

8 **3.1 Reformulation of Covered Products.** Beginning on the Compliance Date, Settling  
9 Defendant shall not purchase or manufacture any Covered Product that will be sold or offered for  
10 sale in California that exceeds the following acrylamide concentration limits (the “Reformulation  
11 Levels”):

12 3.1.1 The average acrylamide concentration of Covered Products as used per  
13 cooking instructions, shall not exceed, on average, 350 parts per billion (“ppb”) by weight (the  
14 “Average Level”). The Average Level is determined by randomly selecting and testing at least 1  
15 sample each from at least 5 and up to 30 different lots of a particular type of Covered Product (or  
16 the maximum number of lots available for testing if fewer than 5) during a testing period of at least  
17 60 days. The mean and standard deviation shall be calculated using the sampling data. Any data  
18 points that are more than three standard deviations outside the mean shall be discarded once, and the  
19 mean and standard deviation recalculated using the remaining data points. The mean determined in  
20 accordance with this procedure shall be deemed the “Average Level.”

21 3.1.2 The acrylamide concentration of any individual unit, as used per cooking  
22 instructions, shall not exceed 500 ppb by weight (the “Unit Level”), based on a representative  
23 composite sample taken from the individual unit being tested.

24 **3.2 Compliance Testing.** Compliance with the Reformulation Levels shall be  
25 determined by use of a test performed by an accredited laboratory using either GC/MS (Gas  
26 Chromatograph/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry) or  
27 any other testing method agreed upon by the Parties. Sampling shall be performed in accordance  
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1 with the sampling protocol attached hereto as Exhibit B, or any other sampling protocol agreed to  
2 by Settling Defendant and CEH. Compliance with the Reformulation Levels shall be determined  
3 after cooking a Covered Product as if prepared for consumption in accordance with the instructions  
4 on the packaging label of that Covered Product. If the label's recommended method includes a  
5 range of cooking temperatures or times, the midpoint of those ranges shall be used in evaluating  
6 compliance with the Reformulation Levels. Any samples of a Covered Product tested under  
7 Sections 3.1.1 and 3.1.2 shall be homogenized before testing for acrylamide content.

#### 8 **4. ENFORCEMENT**

9 **4.1 General Enforcement Provisions.** CEH may, by motion or application for an order  
10 to show cause before this Court, enforce the terms and conditions contained in this Consent  
11 Judgment. Any action to enforce alleged violations of Section 3.1 by Settling Defendant shall be  
12 brought exclusively pursuant to this Section 4, and be subject to the meet and confer requirement of  
13 Section 4.2.5, if applicable.

#### 14 **4.2 Enforcement of Reformulation Commitment.**

15 **4.2.1 Covered Product Identification.** Within 30 days after the Compliance Date,  
16 each Settling Defendant shall notify CEH of a means sufficient to allow CEH to identify Covered  
17 Products manufactured or purchased by that Settling Defendant on or after that date, for example, a  
18 unique brand name or characteristic system of product numbering or labeling. Upon written request  
19 by CEH, but no more than once in any calendar year, Settling Defendant shall, within 30 days of  
20 receiving a request from CEH, update the information provided to CEH pursuant to this Section  
21 4.2.1 by notifying CEH of a means sufficient to allow CEH to identify Covered Products currently  
22 supplied or offered for sale by each Settling Defendant. If CEH is unable to determine whether a  
23 particular product is a Covered Product as to a Settling Defendant based on the information  
24 provided to CEH pursuant to this Section 4.2.1, Settling Defendant shall cooperate in good faith  
25 with CEH in determining whether the product at issue is a Covered Product supplied or offered for  
26 sale by a Settling Defendant. All information provided to CEH pursuant to this Section 4.2.1 may  
27 be designated by Settling Defendant as competitively sensitive confidential business information,  
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1 and if so designated shall not be disclosed to any person without the written permission of Settling  
2 Defendant. Any motions or pleadings or any other court filings that may reveal information  
3 designated as competitively sensitive confidential business information pursuant to this Section  
4 shall be submitted in accordance with California Rules of Court 8.46 and 2.550, et seq. The  
5 provisions of this Section 4.2.1 shall sunset seven years after the Compliance Date.

6 4.2.2 Notice of Violation. In the event that CEH purchases a Covered Product in  
7 California that was manufactured, distributed, or sold by a Settling Defendant and that has a best-by  
8 or sell-by (or equivalent) date or other code that reflects that the Covered Product was manufactured  
9 on or after the Compliance Date and for which CEH has laboratory test results showing that the  
10 Covered Product has an acrylamide level exceeding the Unit Level, then CEH may issue a Notice of  
11 Violation pursuant to this Section.

12 4.2.3 Service of Notice of Violation and Supporting Documentation.

13 4.2.3.1 The Notice of Violation shall be sent to the person(s) identified in  
14 Section 8.2 to receive notices for Settling Defendant, and must be served within sixty (60) days of  
15 the later of the date the Covered Product at issue was purchased or otherwise acquired by CEH or  
16 the date that CEH can reasonably determine that the Covered Product at issue was manufactured,  
17 distributed, or sold by a Settling Defendant, provided, however, that CEH may have up to an  
18 additional sixty (60) days to send the Notice of Violation if, notwithstanding CEH's good faith  
19 efforts, the test data required by Section 4.2.2.2 below cannot be obtained by CEH from its  
20 laboratory before expiration of the initial sixty (60) day period.

21 4.2.3.2 The Notice of Violation shall, at a minimum, set forth: (a) the date the  
22 Covered Product was purchased; (b) a description of the Covered Product giving rise to the alleged  
23 violation, including the name and address of the retail entity from which the sample was obtained  
24 and if available information that identifies the product lot; and (c) all test data obtained by CEH  
25 regarding the Covered Product and supporting documentation sufficient for validation of the test  
26 results, including any laboratory reports, quality assurance reports, and quality control reports  
27 associated with testing of the Covered Product.  
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1                   4.2.4    Notice of Election of Response. No more than sixty (60) days after  
2 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to  
3 CEH whether or not it elects to contest the allegations contained in a Notice of Violation (“Notice  
4 of Election”). Failure to provide a Notice of Election within sixty (60) days of effectuation of  
5 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.

6                   4.2.5    If a Notice of Violation is contested, the Notice of Election shall include all  
7 then-available non-privileged documentary evidence regarding the alleged violation, including all  
8 available test data. If a Settling Defendant or CEH later acquires additional test or other non-  
9 privileged data regarding the alleged violation, it shall notify the other party and promptly provide  
10 all such non-privileged data or information to the party.

11                  4.2.6    Meet and Confer. If a Notice of Violation is contested, CEH and Settling  
12 Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of  
13 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw the  
14 original Notice of Election contesting the violation and serve a new Notice of Election to not  
15 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay  
16 \$2,500 in addition to any payment required under this Consent Judgment. At any time, CEH may  
17 withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the result shall be as  
18 if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of  
19 Violation results within thirty (30) days of a Notice of Election to contest, CEH may file an  
20 enforcement motion or application pursuant to Section 4.1. The parties may extend this thirty (30)  
21 day time period by stipulation. In any enforcement proceeding, CEH may seek whatever fines,  
22 costs, penalties, attorneys’ fees, or other remedies are provided by law for failure to comply with the  
23 Consent Judgment.

24                  4.2.7    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.  
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1                   4.2.7.1     Settling Defendant shall include in its Notice of Election a detailed  
2 description with supporting documentation of the corrective action(s) that it has undertaken or  
3 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,  
4 provide reasonable assurance that all Covered Products having the same lot number or lot code as  
5 that of the Covered Product identified in CEH’s Notice of Violation (the “Noticed Covered  
6 Products”) will not be thereafter be sold or offered for sale in California. Settling Defendant shall  
7 make available to CEH for inspection and copying records of non-privileged correspondence  
8 sufficient to show market withdrawal of the Noticed Covered Products to the extent it has such  
9 documents on file. If the Notice of Violation is based on a violation of the Unit Level with respect  
10 to a single Covered Product, Settling Defendant will be excused from the market withdrawal  
11 obligation if Settling Defendant produce test results or other evidence showing that the Noticed  
12 Covered Products comply with the Average Level specified in Section 3.1.1. However, to avail  
13 themselves of this provision, Settling Defendant must provide CEH with all non-privileged  
14 acrylamide test data in its possession, custody, or control pertaining to the type of Covered Product  
15 at issue in the Notice of Violation that was performed within the year prior to Settling Defendant  
16 producing test results to CEH under this Section 4.2.7.1. If there is a dispute over whether Settling  
17 Defendant is excused from the corrective action, Settling Defendant and CEH shall meet and confer  
18 before seeking any remedy in court.

19                   4.2.7.2     If the Notice of Violation is the first, second, third, or fourth Notice of  
20 Violation received by Settling Defendant under Section 4.2.1 that was not successfully contested or  
21 withdrawn, then Settling Defendant shall pay \$15,000 for each Notice of Violation. This shall be  
22 the sole and exclusive remedy for such violation. If Settling Defendant have received more than  
23 four (4) Notices of Violation under Section 4.2.2 that were not successfully contested or withdrawn,  
24 then Settling Defendant shall pay \$25,000 for each subsequent Notice of Violation. If Settling  
25 Defendant produces with its Notice of Election test data for the specific SKU, or comparative like  
26 items, that reasonably demonstrate predicted acrylamide levels below the Unit Level, then any  
27 payment under this Section shall be reduced by 100 percent (100%) for the first Notice of Violation,  
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1 by seventy-five percent (75%) for the second Notice of Violation, and by fifty percent (50%) for  
2 any subsequent Notice of Violation. If Settling Defendant is excused from the market withdrawal  
3 obligation pursuant to Section 4.2.7.1, then Settling Defendant shall pay \$2,500 for that Notice of  
4 Violation. In no case shall Settling Defendant be obligated to pay more than \$100,000 for  
5 uncontested Notices of Violation in any calendar year irrespective of the total number of Notices of  
6 Violation issued.

7 4.2.7.3 In no case shall CEH issue more than one Notice of Violation per  
8 manufacturing lot of a type of Covered Product. CEH shall be limited to issuing no more than two  
9 total Notices of Violation to Settling Defendant in the first twelve months after the Compliance  
10 Date.

11 4.2.8 Payments. Any payments under Section 4.2 shall be made by check  
12 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a  
13 Notice of Election triggering a payment and which shall be used as reimbursement for costs for  
14 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse attorneys’  
15 fees and costs incurred in connection with these activities, and shall be the extent of all monetary  
16 remedies available to CEH under this Consent Judgment for a non-contested Notice of Violation.

17 4.3 **Repeat Violations.** If Settling Defendant has received five (5) or more Notices of  
18 Violation concerning the same type of Covered Product that were not successfully contested or  
19 withdrawn, as to the fifth (5th) and subsequent Notices of Violation, at CEH’s option, CEH may  
20 seek from Settling Defendant whatever fines, costs, penalties, attorneys’ fees, or other remedies that  
21 are provided by law for failure to comply with the Consent Judgment. Prior to seeking such relief,  
22 CEH shall meet and confer with Settling Defendant for at least thirty (30) days to determine if  
23 Settling Defendant and CEH can agree on measures that Settling Defendant can undertake to  
24 prevent future violations.

## 25 **5. PAYMENTS**

26 5.1 **Payments by Settling Defendant.** Within fifteen (15) calendar days of the Effective  
27 Date, Settling Defendant shall pay the total sum of \$112,500 as a settlement payment as further set  
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1 forth in this Section.

2           **5.2 Allocation of Payments.** The total settlement amount for Settling Defendant shall  
3 be paid in four (4) separate checks in the amounts specified below and delivered as set forth below.  
4 Any failure by Settling Defendant to comply with the payment terms herein shall be subject to a  
5 stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each day the full  
6 payment is not received after the applicable payment due date set forth in Section 5.1. The late fees  
7 required under this Section shall be recoverable, together with reasonable attorneys' fees, in an  
8 enforcement proceeding brought pursuant to Section 4.1 of this Consent Judgment. The funds paid  
9 by Settling Defendant shall be allocated as set forth below between the following categories and  
10 made payable as follows:

11                   5.2.1 \$19,575 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).  
12 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §  
13 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard  
14 Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment for  
15 \$14,681.25 shall be made payable to OEHHA and associated with taxpayer identification number  
16 68-0284486. This payment shall be delivered as follows:

17                               For United States Postal Service Delivery:

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

23                               For Non-United States Postal Service Delivery:

24                                       Attn: Mike Gyurics  
25                                       Fiscal Operations Branch Chief  
26                                       Office of Environmental Health Hazard Assessment  
27                                       1001 I Street, MS #19B  
28                                       Sacramento, CA 95814

29           The CEH portion of the civil penalty payment for \$4,893.75 shall be made payable  
30 to the Center For Environmental Health and associated with taxpayer identification number 94-  
31 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San  
32

1 Francisco, CA 94117.

2           5.2.2     \$14,680 as an Additional Settlement Payment (“ASP”) to CEH pursuant to  
3 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH  
4 intends to restrict use of the ASPs received from the Consent Judgment before the Court to the  
5 following purposes: the funds will be placed in CEH’s Toxics in Food Fund and used to support  
6 CEH programs and activities that seek to educate the public about acrylamide and other toxic  
7 chemicals in food, to work with the food industry and agriculture interests to reduce exposure to  
8 acrylamide and other toxic chemicals in food, and to thereby reduce the public health impacts and  
9 risks of exposure to acrylamide and other toxic chemicals in food sold in California. CEH shall  
10 obtain and maintain adequate records to document that ASPs are spent on these activities and CEH  
11 agrees to provide such documentation to the Attorney General within thirty (30) days of any request  
12 from the Attorney General. The payment pursuant to this Section shall be made payable to the  
13 Center for Environmental Health, associated with taxpayer identification number 94-3251981, and  
14 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

15           5.2.3     \$78,245 as a reimbursement of a portion of CEH’s reasonable attorneys’  
16 fees and costs. The attorneys’ fees and cost reimbursement shall be made payable to the Lexington  
17 Law Group and associated with taxpayer identification number 94-3317175. This payment shall be  
18 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

19 **6.       MODIFICATION AND DISPUTE RESOLUTION**

20           6.1     **Modification.** This Consent Judgment may be modified from time to time by  
21 express written agreement of the Parties, with the approval of the Court and prior notice to the  
22 Attorney General’s Office, or by an order of this Court upon motion and prior notice to the Attorney  
23 General’s Office and in accordance with law.

24           6.2     **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
25 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to modify  
26 the Consent Judgment.

1       **7.       CLAIMS COVERED AND RELEASE**

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

14              7.2       Provided that Settling Defendant complies in full with its obligations under Section 5  
15 hereof, CEH, for itself, its agents, successors, and assigns, releases, waives, and forever discharges  
16 any and all claims against Settling Defendant, Defendant Releasees, and Downstream Defendant  
17 Releasees arising from any violation of Proposition 65 or any other statutory or common law claims  
18 that have been or could have been asserted by CEH individually or in the public interest regarding  
19 the failure to warn about exposure to acrylamide arising in connection with Covered Products  
20 manufactured, distributed, or sold by Settling Defendant prior to the Compliance Date.

21              Provided that Settling Defendant complies in full with its obligations under Section 5 hereof,  
22 CEH, in its individual capacity only and not in its representative capacity, also provides a release to  
23 Settling Defendant, Defendant Releasee, and Downstream Defendant Releasee which shall be  
24 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,  
25 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands of  
26 CEH of any nature, character, or kind, whether known or unknown, suspected or unsuspected,  
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1 arising out of alleged or actual exposures to acrylamide in the Covered Products manufactured,  
2 distributed, or sold by Settling Defendant prior to the Compliance Date.

3 7.3 Provided that Settling Defendant complies in full with its obligations under Section 5  
4 hereof, compliance with the terms of this Consent Judgment by Settling Defendant and Defendant  
5 Releasees shall constitute compliance with Proposition 65 by Settling Defendant, Defendant  
6 Releasees, and Downstream Defendant Releasees with respect to any alleged failure to warn about  
7 acrylamide in Covered Products manufactured, distributed, or sold by Settling Defendant after the  
8 Compliance Date.

9 **8. PROVISION OF NOTICE**

10 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the notice  
11 shall be sent by first class and electronic mail to:

12  
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 Sarah Esmaili  
21 Arnold & Porter Kaye Scholer LLP  
22 3 Embarcadero Center, Suite 1000  
23 San Francisco, CA 94111  
24 sarah.esmaili@apks.com

25 8.3 Any Party may modify the person and/or address to whom the notice is to be sent by  
26 sending the other Parties notice by first class and electronic mail.  
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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 approval of such  
5       Motion.

6               This Consent Judgment is not effective until it is approved and entered by the Court. The  
7       Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a  
8       noticed motion is required for judicial approval of this Consent Judgment, which motion CEH shall  
9       draft and file and Settling Defendant shall support, appearing at the hearing if so requested. If any  
10       third party objection to the motion for approval is filed, CEH and Settling Defendant agree to work  
11       together to file a response and appear at any hearing.

12              If the Court does not approve the Consent Judgment, the Parties agree to meet and confer as  
13       to whether to modify the language or appeal the ruling. If the Parties do not jointly agree on a  
14       course of action to take, then the case shall proceed in its normal course on the Court’s trial  
15       calendar. If the Court’s approval is ultimately overturned by an appellate court, the Parties shall  
16       meet and confer as to whether to modify the terms of this Consent Judgment. If the parties do not  
17       jointly agree on a course of action to take then the case shall proceed in its normal course on the  
18       Court’s trial calendar. In the event that this Consent Judgment is entered by the Court and  
19       subsequently overturned by any appellate court, then any monies that have been provided to CEH or  
20       its counsel under this Consent Judgment shall be refunded within 15 days of the appellate decision  
21       becoming final and the Parties shall reasonably cooperate to obtain a timely refund of monies paid  
22       to OEHHA under this Consent Judgment.

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

26       **10.       GOVERNING LAW AND CONSTRUCTION**

27              10.1       The terms of this Consent Judgment shall be governed by the laws of the State of  
28

1 California.

2 **11. ATTORNEYS' FEES**

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

5 11.2 Nothing in this Section 11 shall preclude a party from seeking an award of sanctions  
6 pursuant to law.

7 **12. ENTIRE AGREEMENT**

8 12.1 This Consent Judgment contains the sole and entire agreement and understanding of  
9 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
10 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and  
11 therein. There are no warranties, representations, or other agreements between the Parties except as  
12 expressly set forth herein. No representations, oral or otherwise, express or implied, other than  
13 those specifically referred to in this Consent Judgment have been made by any Party hereto. No  
14 other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed  
15 to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced  
16 herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the  
17 extent that they are expressly incorporated herein. No supplementation, modification, waiver, or  
18 termination of this Consent Judgment shall be binding unless executed in writing by the Party to be  
19 bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or  
20 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such  
21 waiver constitute a continuing waiver.

22 **13. RETENTION OF JURISDICTION**

23 13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent  
24 Judgment.

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

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

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

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

12 **16. COMPLIANCE WITH REPORTING REQUIREMENTS; DISMISSAL**


13 16.1 CEH agrees to comply with the reporting form requirements referenced in Health  
14 and Safety Code section 25249.7(f).

15 Within five (5) days of the receiving the payments required by Section 5, CEH shall file a  
16 request for dismissal without prejudice as to Defendants Crystal Farms Distribution Company,  
17 Lunardi's Supermarket, Inc. and Lunardi's Foods, and Defendants Crystal Farms Distribution  
18 Company, Lunardi's Supermarket, Inc. and Lunardi's Foods shall waive all costs in this action.

19 **17. EXECUTION IN COUNTERPARTS**

20 17.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
21 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
22 constitute one document.

1 **IT IS SO STIPULATED:**

2 3 Dated: <u>1/11</u> , <del>2018</del> 2019	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>   _____ Signature  <u>MICHAEL GREEN</u> _____ Printed Name  <u>CEO</u> _____ Title
4 5 6 7 8 9 10 11 12 Dated: _____, 2018	<b>MICHAEL FOODS, INC.</b>  _____ Signature  _____ Printed Name  _____ Title

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22 **IT IS SO ORDERED, ADJUDGED,  
AND DECREED**

23 Dated: \_\_\_\_\_  
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25 \_\_\_\_\_  
26 Judge of the Superior Court



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**IT IS SO STIPULATED:**

Dated: _____, 2018	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>  _____ Signature  _____ Printed Name  _____ Title
Dated: <i>January 3, 2018</i> <i>2019</i>	<b>MICHAEL FOODS, INC.</b>  <i>[Signature]</i> _____ Signature  <i>BRAD COOK</i> _____ Printed Name  <i>VP Finance</i> _____ Title

**IT IS SO ORDERED, ADJUDGED,  
AND DECREED**

Dated: \_\_\_\_\_ Judge of the Superior Court

**EXHIBIT A**

- Simply Potatoes® Refrigerated O'Brien Hashbrowns
- Simply Potatoes® Refrigerated Garlic & Herb Hashbrowns
- Simply Potatoes® Refrigerated Shredded Hash Browns Potatoes
- Simply Potatoes® Refrigerated Southwest Shredded Hash Browns Potatoes

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1 **EXHIBIT B**

2 **Sample Preparation Method**

- 3 1. Prepare and cook hash browns according to label instructions.
- 4 2. For a range of cooking time or temperature specified in the label instructions, cook
- 5 according to the midpoint of the range.
- 6 3. Press the hash browns lightly once during cooking.
- 7 4. Distribute the product evenly so that the hash browns layer is not less than 1/2 inch
- 8 thick.
- 9 5. In cooking hash browns, an electric skillet with an adjustable temperature gauge (and
- 10 which can be set to the temperature specified in the label instructions) shall be used.
- 11 Temperature shall be validated with an appropriate thermometer.
- 12 6. Immediately remove hash browns from the skillet when cooking time ends.

13 **Sample Analysis – if hash browns are prepared offsite and shipped to lab**

- 14 1. Remove hash browns from the skillet and allow to cool at room temperature for
- 15 5 minutes.
- 16 2. Refrigerate  $\leq 40^{\circ}\text{F}$  for 2-2.5 hours, before freezing.
- 17 3. Ship samples for ACR analysis overnight on dry ice.

18 Data recorded for each sample shall include cooking method details including hash brown

19 temperature, canola oil weight used, skillet ID, cook time, cook temperature, and shipping date (as

20 applicable).