SUPERIOR COURT OF THE STATE OF CALIFORNIA		
FOR THE COUN	TY OF ALAMEDA	
) G N DG 10 000047	
CENTER FOR ENVIRONMENTAL HEALTH)	
Plaintiff,	 (PROPOSED] CONSENT JUDGMEN AS TO ALDI, INC. 	
V.		
GALLERIA MARKET, LP, et al.,)	
Defendants.		
	_)	
1. DEFINITIONS		
	tive Second Amended Complaint in the above-	
	live Second Amended Complaint in the above-	
captioned matter.	later of December 1, 2010 on the data that is 2	
	e later of December 1, 2019 or the date that is 3	
days after the Effective Date.		
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CONSENT JUDGMENT – AL	DI, INC. – CASE NO. 18-928947	

1.3 "Covered Products" shall mean fried or baked potato- or sweet potato-based chips and snack products, including Sliced Chips and Extruded Products (as defined below) sold or offered for sale by ALDI, Inc. to California consumers under ALDI, Inc's. store brands, including but not limited to Clancy's and Simply Nature.

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1.4 "Sliced Chips" means sliced potato chips.

1.5 "Extruded Products" means all Covered Products other than Sliced Chips. It is the Parties' intent that the Extruded Products referenced in this Consent Judgment are the kind of 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

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

2. INTRODUCTION

2.1 The Parties to this Consent Judgment are the Center For Environmental Health ("CEH"), a California non-profit corporation, and ALDI, Inc. ("Settling Defendant" or "ALDI"). 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 Complaint. The Parties agree and intend that this Consent Judgment resolves any and all claims under Proposition 65 for unwarned exposures to acrylamide in the Covered Products with respect to any entity's manufacture, distribution or sale of the Covered Products.

2.2 On June 1, 2018, CEH issued a 60-day Notice of Violation of Proposition 65 to the California Attorney General, to the District Attorneys of every county in California, to 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 to

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.

acrylamide in excess of the warning threshold when consuming fried or baked potato- or sweet potato-based snack foods under the Clancy brand, without first providing a clear and reasonable Proposition 65 warning.

2.3 On June 20, 2018, CEH issued a 60-day Notice of Violation of Proposition 65 to the California Attorney General, to the District Attorneys of every county in California, to 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 to acrylamide in excess of the warning threshold when consuming fried or baked potato- or sweet potato-based snack foods under the Simply Nature brand, without first providing a clear and reasonable Proposition 65 warning.

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

2.5 On November 16, 2018, CEH filed the original complaint in this action. On January 18, 2019, CEH filed the First Amended Complaint, naming Settling Defendant as a defendant in the action with respect to acrylamide exposures from certain products (but not the Covered Products). On May 21, 2019, CEH filed the Complaint, adding Proposition 65 claims against Settling Defendant with respect to acrylamide exposures from Covered Products under the Clancy brand. Upon entry of this Consent Judgment, the Complaint shall be deemed amended *nunc pro tunc* to assert claims under Proposition 65 for alleged exposures to acrylamide as to all Covered Products.

2.6 ALDI denies CEH's claim that ALDI has failed to comply with Proposition 65 and maintains that it has provided clear and reasonable warnings under Proposition 65 during the statute of limitations period for the Covered Products.

2.7 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 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 with respect to Covered Products manufactured, distributed, and/or sold by Settling Defendant. The Parties agree and acknowledge that this Consent Judgment does not resolve CEH's claims in the Complaint against Settling Defendant with respect to acrylamide exposures from hash brown potato products or French-fried potatoes.

2.8 Nothing in this Consent Judgment is or shall be construed as an admission 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 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.** Beginning on 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 (collectively, the "Reformulation 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, unless Settling Defendant complies with the warning requirements of Section 3.2:

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").

3.2 **Clear and Reasonable Warnings.** A Covered Product purchased, manufactured, shipped, sold, or offered for sale by Settling Defendant after the Compliance Date may, as an alternative to meeting the Reformulation Levels set forth in Section 3.1, thereafter be sold or offered for sale in California with a warning that complies with the provisions of this Section 3.2 (a "Clear and Reasonable Warning").

3.2.1 **Language of Warning.** Irrespective of the method used to provide the warning, a Clear and Reasonable Warning under this Consent Judgment shall state the following:

WARNING: Consuming this product can expose you to chemicals including acrylamide, which is known to the State of California to cause cancer [and birth defects or other reproductive harm]. [Acrylamide is a chemical that can form in some foods during high-

temperature cooking processes, such as frying, roasting, and baking.] For more information go to www.P65Warnings.ca.gov/food.

The word "WARNING" shall be displayed in all capital letters and bold print. The bracketed terms may be provided at ALDI's option.

3.2.2 **Method of Warning.** A Clear and Reasonable Warning under this Consent Judgment shall be provided by one or more of the following methods, as specified below:

3.2.2.1 **Product Labeling or Packaging.** For Covered Products sold in stores where the consumer is physically present, the warning statement shall be displayed on the Covered Product's label or packaging unless Aldi complies with Section 3.2.2.3. The warning on the label or packaging must be set off from other surrounding information and enclosed in a text box. The warning statement shall be in a type size no smaller than the largest type used for other Consumer Information on the Covered Product's label or packaging, and in any case must be no smaller than 6-point type. For purposes of this Section 3.2, the term "Consumer Information" has the same meaning as in 27 Cal. Code Regs. § 25600.1(d).

3.2.2.2 Internet or Catalog Sales. If ALDI offers the Covered Products for sale in California though the internet or a catalog where the consumer is not physically present, the warning statement shall be displayed by including either the warning statement or a clearly marked hyperlink using the word "WARNING" on the display page for the Covered Product, or by otherwise prominently displaying the warning statement in such a manner that it is likely to be read and understood by an ordinary individual prior to the authorization of or actual payment. If an on-product warning is provided pursuant to Section 3.2.2.1, a separate warning statement must still be displayed on the website or catalog. To comply with this Section 3.2.2.2 for sales of Covered Products offered by Settling Defendant on another company's website, Settling Defendant may rely on the notification procedure set out in Title 27, California Code of Regulations, section 25600.2.

3.2.2.3 **In-store signs or shelf tags.** In the alternative to Section 3.2.2.1, the warning statement may be displayed on a sign, shelf tag, or price card that is visible at each point of

display of the Covered Product under all lighting conditions normally encountered during business hours. If the warning statement is provided in the price card, the warning statement shall be displayed in a font size that is at least 9-point type. The warning statement under this Section 3.2.2.3 must be provided in a manner that associates it with the Covered Product to which the warning applies. The Parties agree that the warning that appears on the attached Exhibit A is an example of a Clear and Reasonable Warning that, if displayed in a store in accordance with the other provisions of this Consent Judgment, complies with this Section 3.2.2.3.

3.2.2.4 General requirements for all warnings. Irrespective of which method is used, the warning under this Section 3.2 shall be prominently displayed with such conspicuousness, as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary individual prior to sale. The Parties agree and acknowledge that compliance with Section 3.2.2.3 above satisfies this requirement. In addition, if the warning statement is provided in a sign, label, or shelf tag, or price tag where Consumer Information in a language other than English also appears, the warning statement must also be provided in that language on the sign, label, shelf tag, or price tag, as applicable, in addition to English.

3.2.3 **Compliance review.** If ALDI provides warnings under Section 3.2.2.3, beginning on the Compliance Date, and continuing for a minimum of three years thereafter, a compliance review of ALDI's California stores shall be performed by or for ALDI to determine whether ALDI is compliance with the requirements of Sections 3.2. A compliance review shall be documented and shall note at a minimum, on a per store basis: (i) any deficiencies regarding compliance with Section 3.2; (ii) the date those deficiencies were discovered; (iii) and the date by which the deficiencies were corrected. All documentation regarding this compliance review shall be retained by ALDI for at least one year.

3.3 The warning requirements set forth herein are imposed pursuant to the terms of this Consent Judgment and are recognized by the Parties as not being the exclusive manner of providing a warning for the Covered Products. Warnings may be provided as specified in the Proposition 65 regulations applicable to foods and supplements in effect as of the Effective Date (Title 27, California Code of Regulations, section 25600, *et seq.*) or as such regulations may be amended in the future.

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 relating to alleged non-compliance with Section 3 by Settling Defendant shall be brought exclusively pursuant to this Section 4, and be subject to the meet and confer requirement of Section 4.2.5, if applicable. This Consent Judgment shall be CEH's exclusive means of enforcing Proposition 65 with respect to acrylamide exposures from the Covered Products.

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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 after the Compliance Date and for which CEH has laboratory test results showing that the Covered Product has an acrylamide level exceeding the applicable unit level in Section 3.1.1.2 or 3.1.2.2, and which lacks a Clear and Reasonable Warning that complies with Section 3.2, then CEH may issue a Notice of Violation pursuant to this Section.

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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 date the Covered Product at issue was purchased or otherwise acquired by CEH, 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) a description of the Covered Product giving rise to the alleged violation, including the name and address of the retail location from which the sample was obtained and if available information that identifies the product lot; (c) 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; and (d) photographs and any other relevant facts and available, non-privileged evidence supporting any claim by CEH that no Clear and Reasonable Warning was provided.

4.2.3 Notice of Election of Response. No more than sixty (60) days after effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to CEH whether or not it elects to contest the allegations contained in a Notice of Violation ("Notice of Election"). Failure to provide a Notice of Election within sixty (60) days of effectuation of service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.

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

4.2.5 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 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

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enforcement motion or application pursuant to Section 4.1. The Parties may extend this thirty (30) day time period by stipulation. In any enforcement proceeding, CEH may seek whatever fines, costs, penalties, attorneys' fees, or other remedies are provided by law for failure to comply with the Consent Judgment.

4.2.6 <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.

4.2.6.1 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 or lot code as that of the Covered Product identified in CEH's Notice of Violation (the "Noticed Covered Products") will not be thereafter be sold or offered for sale in California or, if applicable, that a Clear and Reasonable Warning shall be provided to correct the warning deficiencies alleged in the Notice of Violation. Settling Defendant shall make available to CEH for inspection and copying records of non-privileged correspondence sufficient to show market withdrawal of the Noticed Covered Products to the extent it has such documents on file.

4.2.6.2 If the Notice of Violation is based on a violation of the applicable unit level in Section 3.1.1.2 or 3.1.2.2 with respect to a single Covered Product, Settling Defendant will be excused from the market withdrawal obligation if Settling Defendant produce test results or other evidence showing that the Noticed Covered Products comply with the applicable average level in Section 3.1.1.1 or 3.1.2.1. However, to avail itself of this provision, Settling Defendant must provide CEH with all non-privileged acrylamide test data in its possession, custody, or control pertaining to the type of Covered Product at issue in the Notice of Violation that was performed within the year prior to Settling Defendant producing test results to CEH under this Section 4.2.6.1. If there is a dispute over whether Settling Defendant is excused from the corrective action, Settling Defendant and CEH shall meet and confer before seeking any remedy in court.

4.2.6.3 Settling Defendant may respond to a Notice of Violation with an election not to contest that includes documentation to CEH demonstrating that (i) ALDI had conducted a compliance review for the Covered Product at issue under Section 3.2.4 for the store identified the Notice of Violation during the year prior to CEH's issuance of the Notice of Violation; (ii) ALDI timely corrected any deficiencies relevant to Section 3.2 noted in such compliance review for the Covered Product and store at issue in the Notice of Violation; and (iii) ALDI timely corrected any deficiencies relevant to Section 3.2 alleged by CEH for the Covered Product and store at issue in the Notice of Violation; and (iii) ALDI timely corrected any deficiencies relevant to Section 3.2 alleged by CEH for the Covered Product and store at issue in the Notice of Violation. If there is a dispute over whether Settling Defendant's response demonstrates compliance with this section, Settling Defendant and CEH shall meet and confer before seeking any remedy in court.

4.2.6.4 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. Except as otherwise provided in this Section 4, this shall be the sole and exclusive remedy for such violation. If Settling Defendant has received more than four (4) Notices of Violation under Section 4.2.2 that were not successfully contested or withdrawn, then Settling Defendant shall pay \$25,000 for each subsequent Notice of Violation. If Settling Defendant produces with its Notice of Election test data for the specific SKU, or comparative like items, that reasonably demonstrate predicted acrylamide levels below the applicable unit level in Section 3.1.1.2 or 3.1.2.2, 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. If Settling Defendant is excused from the market withdrawal obligation pursuant to Section 4.2.6.2, or provides documentation that satisfies Section 4.2.6.3 then Settling Defendant shall pay \$2,500 for that Notice of Violation. In no case shall Settling Defendant be

- 11 -CONSENT JUDGMENT - ALDI, INC. - CASE NO. 18-928947 obligated to pay more than \$100,000 for uncontested Notices of Violation in any calendar year irrespective of the total number of Notices of Violation issued.

4.2.6.5 In no case shall CEH issue more than one Notice of Violation per manufacturing lot of a type of Covered Product or per store visited in any 90-day period. CEH shall be limited to issuing no more than two total Notices of Violation to Settling Defendant in the first twelve months after the Compliance Date.

4.2.7 <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 which 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, and shall be the extent of all monetary remedies available to CEH under this Consent Judgment for a non-contested Notice of Violation.

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

5. PAYMENTS

5.1 Payments by Settling Defendant. Within fifteen (15) calendar days of the EffectiveDate, Settling Defendant shall pay the total sum of \$127,500 as a settlement payment as further setforth in this Section.

5.2 Allocation of Payments. The total settlement amount for Settling Defendant shall be paid in five (5) separate checks in the amounts specified below and delivered as set forth below.

- 12 consent judgment - aldi, inc. - case no. 18-928947 Any failure by Settling Defendant to comply with the payment terms herein shall be subject to a stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each day the full payment is not received after the payment due date set forth in Section 5.1. The late fees required under this Section shall be recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 4.1 of this Consent Judgment. The funds paid by Settling Defendant shall be allocated as set forth below between the following categories and made payable as follows:

5.2.1 \$17,200 as a civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment for \$12,900 shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows: For United States Postal Service Delivery: Attn: Mike Gyurics **Fiscal Operations Branch Chief** Office of Environmental Health Hazard Assessment P.O. Box 4010, MS #19B 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 \$4,300 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. - 13 -CONSENT JUDGMENT - ALDI, INC. - CASE NO. 18-928947

5.2.2 \$12,900 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, associated with taxpayer identification number 94-3251981, and delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.3 \$97,400 as a reimbursement of a portion of CEH's reasonable attorneys' fees and costs (including but not limited to expert and investigative costs). The attorneys' fees and cost reimbursement shall be made in two separate checks as follows: (a) \$82,265 payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b) \$15,135 payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. These payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

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MODIFICATION AND DISPUTE RESOLUTION

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.

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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 **Warnings From Other Settlements.** To the extent Settling Defendant elects to warn pursuant to Section 3.2, Settling Defendant may seek to modify this Consent Judgment to substitute different warning language or methods approved by a court in a future consent judgment or judgment for exposures to acrylamide in snack food products (provided Settling Defendant only seeks to use such language and methods to a comparable manner of sale of the Covered Products) (*e.g.*, internet warnings will only be used for internet sales). If Settling Defendant seeks to exercise this option, it shall provide notice to CEH, and the Parties shall meet and confer, pursuant to this Section 6. If the Parties cannot resolve the dispute informally during such meet and confer, Settling Defendant may file a motion to modify the Consent Judgment, and the Court shall approve the requested modification unless it finds that the proposed warning language or method does not comply with Proposition 65.

6.4 **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.

6.5 **Other Court Decisions.** If a final decision of a court determines that warnings for

acrylamide exposures or that enforcement of Proposition 65 claims for acrylamide exposures are
 preempted or otherwise unlawful or unconstitutional with respect to products similar to the Covered
 Products, then Settling Defendant may move to modify this Consent Judgment to conform to such
 ruling in order to avoid unfair, inconsistent, or anti-competitive results.
 6.6 Federal Agency Action and Preemption. If a court of competent jurisdiction or an
 agency of the federal government, including, but not limited to, the U.S. Food and Drug

Administration, states through any guidance, regulation or legally binding act that federal law has preemptive effect on any of the requirements of this Consent Judgment, then this Consent Judgment may be modified in accordance with the procedure for noticed motions set forth in Section 6.1 to bring it into compliance with or avoid conflict with federal law. Any such modification shall be limited to those changes that are necessary to bring this Consent Judgment into compliance with or avoid conflict with federal law.

6.7 Before filing any motion to modify the Consent Judgment, Settling Defendant shall provide written notice to CEH to initiate the meet and confer procedure in Section 6.2. If the Parties do not agree on the proposed modification during informal meet and confer efforts, Settling Defendant may file a motion to modify the Consent Judgment within sixty (60) days of the date of the written notice that Settling Defendant provides to CEH under this Section 6.

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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 Settling Defendant's 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 distributes or sells Covered Products, 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. The Defendant Releasees and Downstream Defendant Releasees are collectively referred to as the "Releasees."

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 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.

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

7.4 Provided that Settling Defendant complies in full with its obligations under Section 5hereof, this Consent Judgment resolves all claims CEH has asserted against any other companyunder post-settlement Notices of Violation issued by CEH that are related to the Covered Products.

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1	8.	PRO	VISION OF NOTICE	
2		8.1	When CEH is entitled to receive any notice under this Consent Judgment, the notice	
3	shall be sent by first class and electronic mail to:			
4			TT 1TT 1	
5			Howard Hirsch Lexington Law Group	
6			503 Divisadero Street San Francisco, CA 94117	
7			hhirsch@lex1awgroup.com	
8		8.2	When Settling Defendant is entitled to receive any notice under this Consent	
9	Judgment, the notice shall be sent by first class and electronic mail to:			
10			Sarah Esmaili	
11			Arnold & Porter Kaye Scholer LLP 3 Embarcadero Center, Suite 1000	
12			San Francisco, CA 94111 sarah.esmaili@apks.com	
13				
14		8.3	Any Party may modify the person and/or address to whom the notice is to be sent by	
15	sending the other Parties notice by first class and electronic mail.			
16	9.	COU	RT APPROVAL	
17		9.1	This Consent Judgment shall become effective upon the date signed by CEH and	
18	Settling Defendant, whichever is later, provided, however, that CEH shall prepare and file a Motion			
19	for Approval of this Consent Judgment and Settling Defendant shall support approval of such			
20	Motic	on.		
21		9.2	If this Consent Judgment is not entered by the Court, it shall be of no force or effect	
22	and shall not be introduced into evidence or otherwise used in any proceeding for any purpose other			
23	than to determine whether there was a material breach of Section 9.1.			
24	10.	GOV	ERNING LAW AND CONSTRUCTION	
25		10.1	The terms of this Consent Judgment shall be governed by the laws of the State of	
26	Califo	ornia.		
27			- 18 -	
28			CONSENT JUDGMENT – ALDI, INC. – CASE NO. 18-928947	

11. ATTORNEYS' FEES

11.1 A Party who unsuccessfully brings or contests an action 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 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. Notwithstanding the provisions of Section 6, nothing in this Consent Judgment limits or affects the Court's authority to modify this Consent Judgment as provided by law.

> - 19 consent judgment - aldi, inc. - case no. 18-928947

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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.

14.2 This Consent Judgment shall apply to and be binding upon CEH and SettlingDefendant, and their respective divisions, subdivisions, and subsidiaries, and the successors or assigns of any of them.

15. NO EFFECT ON OTHER SETTLEMENTS

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

16. COMPLIANCE WITH REPORTING REQUIREMENTS

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

17. EXECUTION IN COUNTERPARTS

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

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CONSENT JUDGMENT – ALDI, INC. – CASE NO. 18-928947

1 IT IS SO STIPULATED: 2	· · ·
3 Dated: $\frac{2}{27}$, 2019	CENTER FOR ENVIRONMENTAL HEA
4 5 1 1 1 1 1 1	M. MIL
6	Signature
7	Signature Michael Green
8	Printed Name
9	CEO
1	Title
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3 Dated:, 2019	ALDI, INC.
4	
5	
6	Signature
7	
8	Printed Name
- 	
0	
	Title
2	
³ IT IS SO ORDERED, ADJUDGED,	
AND DECREED	
5 Dated:	
6	Judge of the Superior Court
7	- 21 -
	- 21 - - ALDI, INC CASE NO. 18-928947

Dated:, 2019	CENTER FOR ENVIRONMENTAL HEALT
	Signature
*	
	Printed Name
-	Title
Dated: <u>9/25</u> , 2019	ALDI, INC.
	Dou MIL
	Signature
	Signature Joan M Kavanaugh Printed Name
	Vice President Title
IT IS SO ORDERED, ADJUDGED, AND DECREED	Â
Dated:	Judge of the Superior Court
a <u></u>	- 21 -

1 2	EXHIBIT A
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4	[Product Name]
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6	ソフト
7	0.51 oz.\$2.00 per oz.51976WARNING: Consuming this product can expose you to chemicals
8	including acrylamide which is known to the State of California to cause cancer and birth defects or other reproductive harm.
9	WARNING: Consuming this product can expose you to chemicals including acrylamide which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65warnings.ca.gov/food. This notice is required by the State of California.
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28	CONSENT JUDGMENT – ALDI, INC. – CASE NO. 18-928947