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

CENTER FOR ENVIRONMENTAL
HEALTH,

Plaintiff,

v.

GALLERIA MARKET, LP, *et al.*,

Defendants.

) Case No. RG 18-928947
)
) **[PROPOSED] CONSENT JUDGMENT**
) **AS TO WORLD’S BEST CHEESES**
) **WEST, INC. AND**
) **CHEEZWHESE.COM, INC.**

1. DEFINITIONS

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

1.2 “Covered Products” means fried or baked potato or sweet potato based snack foods sold by Patatas Fritas Torres S.L., including Sliced Chips and Extruded Products, that are manufactured, distributed, or sold by World’s Best Cheeses West, Inc. and/or Cheezwhse.com, Inc.

1 1.3 “Effective Date” means the date on which notice of entry of this Consent
2 Judgment by the Court is served upon Settling Defendants.

3 1.4 “Extruded Products” means all Covered Products other than Sliced Chips. It is
4 the Parties’ intent that the Extruded Products referenced in this Consent Judgment are the kind
5 of potato or sweet potato based products falling within Type 4 in the “extruded, pellet, and
6 baked products” category in the Consent Judgment as to Defendant Snak King Corporation,
7 entered August 31, 2011, in *People v. Snyder’s of Hanover, et al.*, Alameda County Superior
8 Court Case No. RG 09-455286.¹

9 1.5 “Settling Defendants” means World’s Best Cheeses West, Inc. and/or
10 Cheezwhse.com, Inc.

11 1.6 “Sliced Chips” means sliced potato chips and sliced sweet potato chips.

12 **2. INTRODUCTION**

13 2.1 The Parties to this Consent Judgment are the Center for Environmental Health,
14 a California non-profit corporation (“CEH”), on the one hand, and World’s Best Cheeses
15 West, Inc. and Cheezwhse.com, Inc., on the other hand. CEH and Settling Defendants (the
16 “Parties”) enter into this Consent Judgment to settle certain claims asserted by CEH against
17 Settling Defendants as set forth in the Complaint in the above-captioned matter.

18 2.2 On or about November 6, 2018, CEH provided a 60-day Notice of Violation of
19 Proposition 65 to the California Attorney General, to the District Attorneys of every county in
20 California, to the City Attorneys of every California city with a population greater than
21 750,000, and to Settling Defendants in which CEH alleged that Settling Defendants violated
22 Proposition 65 by exposing persons to acrylamide contained in Covered Products without first
23 providing a clear and reasonable Proposition 65 warning.

24 2.3 Settling Defendants are each a business entity that manufactures, distributes,
25 sells, or offers for sale Covered Products that are sold in the State of California or has done so
26 in the past.

27 _____
28 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>.

1 2.4 On November 16, 2018, CEH filed the original complaint in the above-
2 captioned matter. On January 18, 2019, CEH filed a First Amended complaint. On May 21,
3 2019, CEH filed a Second Amended complaint, naming Settling Defendants as defendants in
4 the action.

5 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
6 has jurisdiction over the allegations of violations contained in the operative Complaint and
7 personal jurisdiction over Settling Defendants as to the acts alleged in the operative Complaint,
8 that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and
9 enforce this Consent Judgment as a full and final resolution of all claims which were or could
10 have been raised in the operative Complaint based on the facts alleged therein with respect to
11 Covered Products manufactured, distributed, and/or sold by Settling Defendants.

12 2.6 Nothing in this Consent Judgment is or shall be construed as an admission by
13 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall
14 compliance with the Consent Judgment constitute or be construed as an admission by the
15 Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this
16 Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense
17 the Parties may have in any other pending or future legal proceedings. This Consent Judgment
18 is the product of negotiation and compromise and is accepted by the Parties solely for purposes
19 of settling, compromising, and resolving issues disputed in this action.

20 **3. INJUNCTIVE RELIEF**

21 3.1 **Reformulation of Covered Products.** Upon the Effective Date, Settling
22 Defendants shall not purchase, manufacture, ship, sell, or offer for sale Covered Products that
23 will be sold or offered for sale in California that exceed the following acrylamide
24 concentration levels (“Reformulation Levels”), such concentration to be determined by use of
25 a test performed by an accredited laboratory using either GC/MS (Gas Chromatograph/Mass
26 Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), or any other testing
27 method agreed upon by the Parties:
28

1 3.1.1 For Sliced Chips:

2 3.1.1.1 The average acrylamide concentration shall not exceed 281 parts
3 per billion (“ppb”) by weight (the “Sliced Chips Average Level”). The Sliced Chips Average
4 Level is determined by randomly selecting and testing at least 1 sample each from 5 different
5 lots of a particular type of Covered Product that is a Sliced Chip (or the maximum number of
6 lots available for testing if less than 5) during a testing period of at least sixty (60) days.

7 3.1.1.2 The acrylamide concentration of any individual unit of Sliced
8 Chips shall not exceed 350 ppb by weight, based on a representative composite sample taken
9 from the individual unit being tested (the “Sliced Chips Unit Level”).

10 3.1.2 For Extruded Products:

11 3.1.2.1 The average acrylamide concentration shall not exceed 350
12 ppb by weight (the “Extruded Products Average Level”). The Extruded Products Average Level
13 is determined by randomly selecting and testing at least 1 sample each from 5 different lots of a
14 particular type of Covered Product that is an Extruded Product (or the maximum number of lots
15 available for testing if less than 5) during a testing period of at least sixty (60) days.

16 3.1.2.2 The acrylamide concentration of any individual unit of
17 Extruded Products shall not exceed 490 ppb by weight, based on a representative composite
18 sample taken from the individual unit being tested (the “Extruded Products Unit Level”).

19 3.2 **Clear and Reasonable Warnings.** A Covered Product purchased, manufactured,
20 shipped, sold, or offered for sale by Settling Defendant may, as an alternative to meeting the
21 reformulation levels set forth in Section 3.1, be sold or offered for sale in California with a Clear
22 and Reasonable Warning that complies with the provisions of this Section 3.2. A Clear and
23 Reasonable Warning may only be provided for Covered Products that Settling Defendant
24 reasonably believes do not meet the Reformulation Levels. A Clear and Reasonable Warning
25 under this Agreement shall state:

1 **WARNING:** Consuming this product can expose you to chemicals including acrylamide,
2 which are known to the State of California to cause cancer. For more information go to
3 www.P65Warnings.ca.gov/food.

4 The word “**WARNING**” shall be displayed in all capital letters and bold print. This warning
5 statement shall be prominently displayed on the Covered Product, on the packaging of the
6 Covered Product, or on a placard or sign provided that the statement is displayed with such
7 conspicuousness, as compared with other words, statements or designs as to render it likely to be
8 read and understood by an ordinary individual prior to sale. If the warning statement is
9 displayed on the Covered Product’s label, it must be set off from other surrounding information
10 and enclosed in a text box. If the warning statement is displayed on a placard or sign where the
11 Covered Product is offered for sale, the warning placard or sign must enable an ordinary
12 individual to easily determine which specific Covered Products the warning applies to, and to
13 differentiate between that Covered Product and other products to which the warning statement
14 does not apply. For internet, catalog, or any other sale where the consumer is not physically
15 present, the warning statement shall be displayed in such a manner that it is likely to be read and
16 understood by an ordinary individual prior to the authorization of or actual payment. The
17 warning requirements set forth herein are imposed pursuant to the terms of this Consent
18 Judgment, and are recognized by the Parties as not being the exclusive manner of providing a
19 warning for the Covered Products. Warnings may be provided as specified in the Proposition
20 65 regulations for food in effect as of the Effective Date (Title 27, California Code of
21 Regulations, section 25601, *et seq.*) or as such regulations may be amended in the future.

22 **4. ENFORCEMENT**

23 4.1 **General Enforcement Provisions.** CEH may, by motion or application for an
24 order to show cause before this Court, enforce the terms and conditions contained in this
25 Consent Judgment. Any action to enforce alleged violations of Section 3 by Settling
26 Defendants shall be brought exclusively pursuant to this Section 4, and be subject to the meet
27 and confer requirement of Section 4.2.5 if applicable.
28

1 4.2 **Enforcement of Reformulation Commitment by CEH.**

2 4.2.1 Notice of Violation. In the event that CEH identifies a Covered
3 Product that was sold or offered for sale to California consumers by Settling Defendants with a
4 best-by or sell-by (or equivalent) date more than 6 months after the Effective Date, and for
5 which CEH has laboratory test results showing that the Covered Product exceeds the
6 applicable Unit Level, and which lacks a Clear and Reasonable Warning that complies with
7 Section 3.2, CEH may issue a Notice of Violation pursuant to this Section.

8 4.2.2 Service of Notice of Violation and Supporting Documentation.

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

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

26 4.2.3 Notice of Election of Response. No more than thirty (30) days after
27 effectuation of service of a Notice of Violation, Settling Defendants shall provide written
28

1 notice to CEH whether they elect to contest the allegations contained in a Notice of Violation
2 (“Notice of Election”). Failure to provide a Notice of Election within thirty (30) days of
3 effectuation of service of a Notice of Violation shall be deemed an election to contest the
4 Notice of Violation. Upon notice to CEH, Settling Defendants may have up to an additional
5 sixty (60) days to elect if, notwithstanding Settling Defendants’ good faith efforts, Settling
6 Defendants are unable to verify the test data provided by CEH before expiration of the initial
7 thirty (30) day period.

8 4.2.4 If a Notice of Violation is contested, the Notice of Election shall
9 include all documents upon which Settling Defendants are relying to contest the alleged
10 violation, including all available acrylamide test data for Covered Products with the same lot
11 number as that of the Covered Product identified in CEH’s Notice of Violation (the “Noticed
12 Covered Products”). If a Settling Defendant or CEH later acquires additional test or other data
13 regarding the alleged violation during the meet and confer period described in Section 4.2.5, it
14 shall notify the other party and promptly provide all such data or information to the party
15 unless either the Notice of Violation or Notice of Election has been withdrawn.

16 4.2.5 Meet and Confer. If a Notice of Violation is contested, CEH and
17 Settling Defendants shall meet and confer to attempt to resolve their dispute. Within thirty
18 (30) days of serving a Notice of Election contesting a Notice of Violation, Settling Defendants
19 may withdraw the original Notice of Election contesting the violation and serve a new Notice
20 of Election to not contest the violation, provided, however, that, in this circumstance, Settling
21 Defendants shall pay \$2,500 in addition to any other payment required under this Consent
22 Judgment. At any time, CEH may withdraw a Notice of Violation, in which case for purposes
23 of this Section 4.2 the result shall be as if CEH never issued any such Notice of Violation. If
24 no informal resolution of a Notice of Violation results within thirty (30) days of a Notice of
25 Election to contest, CEH may file an enforcement motion or application pursuant to Section
26 4.1. In any such proceeding, CEH may seek whatever fines, costs, penalties, attorneys’ fees,
27 or other remedies are provided by law for an alleged failure to comply with the Consent
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1 Judgment, including but not limited to an order by the Court requiring Settling Defendants to
2 implement corrective action to remedy any violations of this Consent Judgment. In the event
3 CEH proves a violation of Section 3 in an enforcement proceeding, the Court in its discretion
4 may order that Settling Defendants cease selling any affected Covered Products in California
5 without a clear and reasonable warning pursuant to Proposition 65. In any enforcement
6 proceeding regarding this Consent Judgment, Settling Defendants may assert any and all
7 defenses that are available.

8 4.2.6 Non-Contested Notices. If Settling Defendants elect to not contest the
9 allegations in a Notice of Violation, they shall undertake corrective action(s) and make
10 payments, if any, as set forth below.

11 4.2.6.1 Settling Defendants shall include in their Notice of Election a
12 detailed description with supporting documentation of the corrective action(s) that they have
13 undertaken or propose to undertake to address the alleged violation. Any such correction shall,
14 at a minimum, provide reasonable assurance that all Noticed Covered Products will not be
15 thereafter be sold or offered for sale in California without a Clear and Reasonable Warning
16 pursuant to Section 3.2. Settling Defendants shall make available to CEH for inspection and
17 copying records of non-privileged correspondence sufficient to show market withdrawal of
18 and/or the provision of warnings on the Noticed Covered Products to the extent they have such
19 documents on file. If the Notice of Violation is based on a violation of the Unit Level with
20 respect to a single Covered Product, Settling Defendants may be excused from the corrective
21 action obligation described in the foregoing (but not the monetary payments, if any, required
22 by this Section 4) if Settling Defendants produce test results and other evidence that: (1)
23 demonstrates that the acrylamide levels found by CEH in the unit alleged to be in violation is
24 an aberration; and (2) otherwise provides reasonable assurance that the remainder of the
25 Noticed Covered Products, aside from the unit alleged to be in violation, comply with the
26 applicable Reformulation Levels. The Parties agree that this Section 4.2.6.1 is satisfied if
27 Settling Defendants can demonstrate that the type of Covered Product at issue in the Notice of
28

1 Violation satisfies the applicable Average Level. However, to avail itself of this provision,
2 Settling Defendants must provide CEH with all non-privileged acrylamide test data in their
3 possession, custody, or control pertaining to the type of Covered Product at issue in the Notice
4 of Violation that was performed within the year prior to the date of the Notice of Election. If
5 there is a dispute over whether Settling Defendants are excused from the corrective action,
6 Settling Defendants and CEH shall meet and confer before seeking any remedy in court. In no
7 case shall CEH issue more than one Notice of Violation per manufacturing lot of a type of
8 Covered Product, nor shall CEH issue more than two Notices of Violation in the first year
9 following the Effective Date.

10 4.2.6.2 If the Notice of Violation is the first, second, or third Notice of
11 Violation received by Settling Defendants under Section 4.2.1 that was not successfully
12 contested or withdrawn, then Settling Defendants shall pay \$15,000 for each Notice of
13 Violation. If Settling Defendants have received more than three (3) Notices of Violation under
14 Section 4.2.1 that were not successfully contested or withdrawn, then Settling Defendants shall
15 pay \$25,000 for each Notice of Violation. If Settling Defendants produce with their Notice of
16 Election test data for the Covered Product that : (i) was conducted prior to the date CEH gave
17 Notice of Violation; (ii) was conducted on the same type of Covered Product; and
18 (iii) demonstrates acrylamide levels below the applicable Unit Level, then any payment under
19 this Section shall be reduced by 100 percent (100%) for the first Notice of Violation, by
20 seventy-five percent (75%) for the second Notice of Violation, and by fifty percent (50%) for
21 any subsequent Notice of Violation. If Settling Defendants are excused from the corrective
22 action obligation pursuant to Section 4.2.6.1, then Settling Defendants shall pay \$2,500 for that
23 Notice of Violation. In no case shall Settling Defendants be obligated to pay more than
24 \$100,000 for all Notices of Violation not successfully contested or withdrawn in any calendar
25 year irrespective of the total number of Notices of Violation issued. Nothing in Section 4.2.6.1
26 (addressing non-contested violations) shall impact the Court’s authority in an enforcement
27 proceeding to impose appropriate remedies for any contested Notices of Violation.
28

1 4.2.7 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 Defendants have received three (3) or more
7 Notices of Violation concerning the same type of Covered Product that were not successfully
8 contested or withdrawn in any two (2) year period then, at CEH’s option, CEH may seek
9 whatever fines, costs, penalties, attorneys’ fees, or other remedies that are provided by law for
10 failure to comply with the Consent Judgment, including but not limited to an order requiring
11 that Settling Defendants cease selling any affected Covered Products in California without a
12 clear and reasonable warning pursuant to Proposition 65. Prior to seeking such relief, CEH
13 shall meet and confer with Settling Defendants for at least thirty (30) days to determine if
14 Settling Defendants and CEH can agree on measures that Settling Defendants can undertake to
15 prevent future alleged violations. In any enforcement proceeding regarding this Consent
16 Judgment, Settling Defendants may assert any and all defenses that are available.

17 **5. PAYMENTS**

18 5.1 **Payments by Settling Defendants.** Within ten (10) calendar days of the
19 Effective Date, Settling Defendants shall pay the total sum of \$38,000 as a settlement payment
20 as further set forth in this Section.

21 5.2 **Allocation of Payments.** The total settlement amount for Settling Defendants
22 shall be paid in five (5) separate checks in the amounts specified below and delivered as set
23 forth below. Any failure by Settling Defendants to comply with the payment terms herein
24 shall be subject to a stipulated late fee to be paid by Settling Defendants to CEH in the amount
25 of \$100 for each day the full payment is not received after the payment due date set forth in
26 Section 5.1. The late fees required under this Section shall be recoverable, together with
27 reasonable attorneys’ fees, in an enforcement proceeding brought pursuant to Section 4 of this
28

1 Consent Judgment. The funds paid by Settling Defendants shall be allocated as set forth
2 below between the following categories and made payable as follows:

3 5.2.1 \$4,928 as a civil penalty pursuant to Health & Safety Code §
4 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health &
5 Safety Code § 25249.12 (25% to CEH and 75% to the State of California’s Office of
6 Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of
7 the civil penalty payment for \$3,696 shall be made payable to OEHHA and associated with
8 taxpayer identification number 68-0284486. This payment shall be delivered as follows:

9 For United States Postal Service Delivery:

10 Attn: Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 P.O. Box 4010, MS #19B
14 Sacramento, CA 95812-4010

15 For Non-United States Postal Service Delivery:

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

21 The CEH portion of the civil penalty payment for \$1,232 shall be made payable to the Center
22 for Environmental Health and associated with taxpayer identification number 94-3251981.

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

25 5.2.2 \$3,692 as an Additional Settlement Payment (“ASP”) to CEH pursuant
26 to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204.
27 CEH intends to restrict use of the ASPs received from this Consent Judgment to the following
28 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

1 impacts and risks of exposure to acrylamide and other toxic chemicals in food sold in
2 California. CEH shall obtain and maintain adequate records to document that ASPs are spent
3 on these activities and CEH agrees to provide such documentation to the Attorney General
4 within thirty (30) days of any request from the Attorney General. The payment pursuant to
5 this Section shall be made payable to the Center for Environmental Health and associated with
6 taxpayer identification number 94-3251981. This payment shall be delivered to Lexington
7 Law Group, 503 Divisadero Street, San Francisco, CA 94117.

8 5.2.3 \$29,380 as a reimbursement of a portion of CEH’s reasonable
9 attorneys’ fees and costs (including but not limited to expert and investigative costs). The
10 attorneys’ fees and cost reimbursement shall be made in two separate checks as follows: (a)
11 \$24,985 payable to the Lexington Law Group and associated with taxpayer identification
12 number 94-3317175; and (b) \$4,395 payable to the Center for Environmental Health and
13 associated with taxpayer identification number 94-3251981. These payments shall be
14 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

15 **6. MODIFICATION AND DISPUTE RESOLUTION**

16 6.1 **Modification.** This Consent Judgment may be modified from time to time by
17 express written agreement of the Parties, with the approval of the Court and prior notice to the
18 Attorney General’s Office, or by an order of this Court upon motion and prior notice to the
19 Attorney General’s Office and in accordance with law.

20 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent
21 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a
22 motion to modify the Consent Judgment.

23 **7. CLAIMS COVERED AND RELEASE**

24 7.1 Provided that Settling Defendants comply in full with their obligations under
25 Section 5 hereof, this Consent Judgment is a full, final, and binding resolution between CEH on
26 behalf of itself and the public interest and Settling Defendants and each entity’s parents,
27 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
28

1 agents, shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities
2 to which Settling Defendants directly or indirectly distribute or sell Covered Products, including
3 but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and
4 licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on
5 failure to warn about alleged exposure to acrylamide contained in Covered Products that were
6 sold, distributed, or offered for sale by Settling Defendants prior to the Effective Date.

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

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

21 **8. PROVISION OF NOTICE**

22 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
23 notice shall be sent by first class and electronic mail to:

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

29 8.2 When any Settling Defendant is entitled to receive any notice under this

1 Consent Judgment, the notice shall be sent by first class and electronic mail to:

2 Kendra Tietjen
3 Wilson Elser Moskowitz Edelman & Dicker LLP
4 525 Market Street, 17th Floor
5 San Francisco, CA 94105
6 kendra.tietjen@wilsonelser.com

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

9 **9. COURT APPROVAL**

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

14 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
15 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
16 purpose other than to allow the Court to determine if there was a material breach of Section
17 9.1.

18 **10. GOVERNING LAW AND CONSTRUCTION**

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

21 **11. ATTORNEYS' FEES**

22 11.1 Should CEH prevail on any motion, application for an order to show cause, or
23 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
24 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
25 Settling Defendants prevail on any motion application for an order to show cause, or other
26 proceeding, Settling Defendants may be awarded their reasonable attorneys' fees and costs as a
27 result of such motion or application upon a finding by the Court that CEH's prosecution of the
28 motion or application lacked substantial justification. For purposes of this Consent Judgment,
the term substantial justification shall carry the same meaning as used in the Civil Discovery

1 Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

2 11.2 Nothing in this Section 11 shall preclude a party from seeking an award of
3 sanctions pursuant to law.

4 **12. ENTIRE AGREEMENT**

5 12.1 This Consent Judgment contains the sole and entire agreement and
6 understanding of the Parties with respect to the entire subject matter hereof, and any and all
7 prior discussions, negotiations, commitments, or understandings related thereto, if any, are
8 hereby merged herein and therein. There are no warranties, representations, or other
9 agreements between the Parties except as expressly set forth herein. No representations, oral
10 or otherwise, express or implied, other than those specifically referred to in this Consent
11 Judgment have been made by any Party hereto. No other agreements not specifically
12 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
13 Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise,
14 shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are
15 expressly incorporated herein. No supplementation, modification, waiver, or termination of
16 this Consent Judgment shall be binding unless executed in writing by the Party to be bound
17 thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall
18 constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such
19 waiver constitute a continuing waiver.

20 **13. RETENTION OF JURISDICTION**

21 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
22 Consent 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
3 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter
4 into and execute the Consent Judgment on behalf of the Party represented and legally to bind
5 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 an entity other than Settling Defendants on terms that are different from those
9 contained in this Consent Judgment.

10 **16. SUCCESSORS AND ASSIGNS**

11 16.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
12 Defendant, and their respective divisions, subdivisions, and subsidiaries, and the successors or
13 assigns of any of them.

14 **17. EXECUTION IN COUNTERPARTS**


15 17.1 The stipulations to this Consent Judgment may be executed in counterparts and
16 by means of facsimile or portable document format (pdf), which taken together shall be
17 deemed to constitute one document.

18
19 **IT IS SO ORDERED, ADJUDGED,**
20 **AND DECREED**



21 Dated: _____

22 _____
23 Judge of the Superior Court
24
25
26
27
28

1 **IT IS SO STIPULATED:**

<p>2</p> <p>3 Dated: <u>November 24</u>, 2020</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p>	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p></p> <p>_____ Signature</p> <p><u>Michael Green</u> _____ Printed Name</p> <p><u>CEO</u> _____ Title</p>
<p>12 Dated: _____, 2020</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p>	<p>WORLD'S BEST CHEESES WEST, INC.</p> <p>_____ Signature</p> <p>_____ Printed Name</p> <p>_____ Title</p>
<p>20 Dated: _____, 2020</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p>	<p>CHEEZWHSE.COM, INC.</p> <p>_____ Signature</p> <p>_____ Printed Name</p> <p>_____ Title</p>

1 **IT IS SO STIPULATED:**

3 Dated: _____, 2020 4 5 6 7 8 9 10	CENTER FOR ENVIRONMENTAL HEALTH _____ Signature _____ Printed Name _____ Title
11 Dated: <u>11/17</u> , 2020 12 13 14 15 16 17 18 19	WORLD'S BEST CHEESES WEST, INC.  _____ Signature <u>Stephen Gellert</u> _____ Printed Name <u>Executive Vice President</u> _____ Title
20 Dated: <u>11/17</u> , 2020 21 22 23 24 25 26 27 28	CHEEZWHSE.COM, INC.  _____ Signature <u>Stephen Gellert</u> _____ Printed Name <u>Executive Vice President</u> _____ Title