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

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|------------------------------------|---|--|
| CENTER FOR ENVIRONMENTAL HEALTH, |) | Case No. RG 17-881932 |
| |) | |
| Plaintiff, |) | [PROPOSED] CONSENT |
| |) | JUDGMENT AS TO GENERAL |
| v. |) | MILLS, INC., ANNIE’S, INC., AND |
| |) | ANNIE’S HOMEGROWN, INC. |
| BARREL O’FUN SNACK FOODS CO., LLC, |) | |
| <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |
| |) | |
| |) | |

1. DEFINITIONS

- 1.1 The “Complaint” means the operative First Amended Complaint in the above-captioned matter.
- 1.2 “Compliance Date” shall mean May 1, 2021.
- 1.3 “Covered Products” means Annie’s Homegrown Organic Animal Cookies.
- 1.4 “Effective Date” means the date on which notice of entry of this Consent Judgment by the Court is served upon Settling Defendants.

2. INTRODUCTION

2.1 The Parties to this Consent Judgment are the Center for Environmental Health a California non-profit corporation (“CEH”), on the one hand, and General Mills, Inc.,

1 Annie's, Inc., and Annie's Homegrown, Inc. ("Settling Defendants"), on the other hand. CEH
2 and Settling Defendants (the "Parties") enter into this Consent Judgment to settle certain claims
3 asserted by CEH against Settling Defendants as set forth in the Complaint.

4 2.2 On or about July 25, 2019, CEH provided a 60-day Notice of Violation of
5 Proposition 65 to the California Attorney General, the District Attorneys of every county in
6 California, the City Attorneys of every California city with a population greater than 750,000, and
7 to Settling Defendants, alleging that Settling Defendants violated Proposition 65 by exposing
8 persons in California to acrylamide contained in Covered Products without first providing a clear
9 and reasonable Proposition 65 warning (the "Notice").

10 2.3 Each Settling Defendant is a corporation or other business entity that
11 manufactures, distributes, sells, and/or offers for sale Covered Products that are sold in the State
12 of California or has done so at times relevant to the Complaint.

13 2.4 On November 9, 2017, CEH filed the initial Complaint in the above-
14 captioned matter, naming Settling Defendant General Mills, Inc. as an original defendant with
15 respect to alleged acrylamide exposures from different products than the Covered Products. On
16 November 20, 2019, CEH filed the Complaint, naming Settling Defendants as defendants with
17 respect to alleged acrylamide exposures from the Covered Products.

18 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this
19 Court has jurisdiction over the allegations of violations contained in the Complaint and personal
20 jurisdiction over Settling Defendants as to the acts alleged in the Complaint, that venue is proper
21 in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent
22 Judgment as a full and final resolution of all claims which were or could have been raised in the
23 Complaint based on the facts alleged therein and in the Notice with respect to Covered Products
24 manufactured, distributed, and/or sold by Settling Defendants. The Parties agree and
25 acknowledge that this Consent Judgment does not resolve CEH's claims in the Complaint against
26 Settling Defendants with respect to acrylamide exposures from Betty Crocker Molasses Cookie
27 Mix.

28 2.6 Nothing in this Consent Judgment is or shall be construed as an admission

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

8 **3. INJUNCTIVE RELIEF**

9 **3.1 Reformulation of Covered Products.** After the Compliance Date, Settling
10 Defendants shall not purchase or manufacture Covered Products that will be sold or offered for
11 sale in California which do not meet the Reformulation Levels in sections 3.1.1-3.1.2 below.
12 Covered Products purchased, manufactured, distributed, shipped or sold by Settling Defendants
13 prior to the Compliance Date are not subject to the injunctive relief requirements of Section 3,
14 even if such products are sold in California or to California consumers after the Effective Date.

15 **3.1.1** The average acrylamide concentration shall not exceed 175 parts per
16 billion (“ppb”) by weight (the “Average Level”).

17 **3.1.2** The acrylamide concentration of any individual unit of Covered Products
18 shall not exceed 200 ppb by weight (the “Unit Level”), based on a representative composite
19 sample taken from the individual unit being tested.

20 **3.2 Average Level Determination.** The Average Level is determined by
21 randomly selecting and testing at least one (1) sample each from at least five (5) and up to ten
22 (10) different lots of a particular Covered Product (or the maximum number of lots available for
23 testing if fewer than three) during a testing period of at least 365 days. The mean and standard
24 deviation shall be calculated using the sampling data. Any data points that are more than three
25 standard deviations outside the mean shall be discarded, and the mean and standard deviation
26 recalculated using the remaining data points. The mean determined in accordance with this
27 procedure shall be deemed the “Average Level.” Alternatively, the Average Level may be
28 determined in accordance with any applicable Proposition 65 regulations.

1 3.3 **Compliance Testing.** Compliance with the Reformulation Levels shall be
2 determined by use of a test performed by an accredited laboratory using either GC/MS (Gas
3 Chromatograph/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry) or
4 any other testing method agreed upon by the Parties.

5 **4. ENFORCEMENT**

6 4.1 **General Enforcement Provisions.** CEH may, by motion or application for an
7 order to show cause before this Court, enforce the terms and conditions contained in this Consent
8 Judgment. Any action to enforce alleged violations of Section 3.1 by a Settling Defendant shall
9 be brought exclusively pursuant to this Section 4, and be subject to the meet and confer
10 requirement of Section 4.2.4 if applicable.

11 4.2 **Enforcement of Reformulation Commitment.**

12 4.2.1 Notice of Violation. In the event that CEH purchases a Covered Product in
13 California that was manufactured, distributed, sold or offered for sale by a Settling Defendant
14 with a best-by or sell-by (or equivalent) date or other code that reflects that the Covered Product
15 was manufactured on or after the Compliance Date, and for which CEH has laboratory test results
16 showing that the Covered Product has an acrylamide level exceeding the Unit Level, then CEH
17 may issue a Notice of Violation pursuant to this Section. If the manufacturer or purchase date is
18 not apparent from the dates or coding used on the Covered Product label, CEH shall withdraw the
19 Notice of Violation if Settling Defendants demonstrate that the Covered Product at issue was
20 manufactured or purchased by Settling Defendants before the Compliance Date. Such Notice of
21 Violation shall be based upon a test result sufficient to establish an exceedance of the Unit Level
22 as it is to be evaluated under the sampling and testing criteria described in Section 3 above.

23 4.2.2 Service of Notice of Violation and Supporting Documentation.

24 4.2.2.1 The Notice of Violation shall be sent to the person(s) identified
25 in Section 8.2 to receive notices for Settling Defendants, and must be served within thirty (30)
26 days of the later of the date the Covered Product at issue was purchased or otherwise acquired by
27 CEH or the date that CEH can reasonably determine that the Covered Product at issue was
28 manufactured, distributed, shipped, sold, or offered for sale by a Settling Defendant, provided,

1 however, that CEH may have up to an additional thirty (30) days to send the Notice of Violation
2 if, notwithstanding CEH's good faith efforts, the test data required by Section 4.2.2.2 below
3 cannot be obtained by CEH from its laboratory before expiration of the initial thirty (30) day
4 period.

5 4.2.2.2 The Notice of Violation shall, at a minimum, set forth: (a) the
6 date the Covered Product was purchased; (b) the location at which the Covered Product was
7 purchased; (c) a description of the Covered Product giving rise to the alleged violation, including
8 the name and address of the retail entity from which the sample was obtained and pictures of the
9 product packaging from all sides, which identifies the product lot and (d) all test data obtained by
10 CEH regarding the Covered Product and supporting documentation sufficient for validation of the
11 test results, including any laboratory reports, quality assurance reports, and quality control reports
12 associated with testing of the Covered Product.

13 4.2.3 Notice of Election of Response. No more than thirty (30) days after
14 effectuation of service of a Notice of Violation, Settling Defendants shall provide written notice
15 to CEH whether they elect to contest the allegations contained in a Notice of Violation ("Notice
16 of Election"). Failure to provide a Notice of Election within thirty (30) days of effectuation of
17 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.
18 Upon notice to CEH, Settling Defendants shall be granted up to an additional thirty (30) days to
19 elect a response if, notwithstanding Settling Defendants' good faith efforts, Settling Defendants
20 are unable to verify the test data provided by CEH in the Notice of Violation before the expiration
21 of the initial thirty (30) day period.

22 4.2.3.1 If a Notice of Violation is contested, the Notice of Election shall
23 include all then-available documents upon which Settling Defendants are relying to contest the
24 alleged violation, including all then-available non-privileged test data. If a Settling Defendant or
25 CEH later acquires additional test or other non-privileged data regarding the alleged violation
26 during the meet and confer period described in Section 4.2.4, it shall notify the other Party and
27 promptly provide all such non-privileged data or information to the Party unless either the Notice
28 of Violation or Notice of Election has been withdrawn.

1 4.2.3.2 Settling Defendants can successfully contest a Notice of Violation
2 if they produce with their Notice of Election a copy of correspondence dated before the time of
3 the purchase that triggered CEH's Notice of Violation, to a person and/or entity that caused the
4 Covered Product to be sold in California, instructing that person and/or entity to cease offering
5 the Covered Product(s) for sale in California.

6 4.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and Settling
7 Defendants shall meet and confer to attempt to resolve their dispute. Within fifteen (15) days of
8 serving a Notice of Election contesting a Notice of Violation, Settling Defendants may withdraw
9 the original Notice of Election contesting the violation and serve a new Notice of Election to not
10 contest the violation, provided, however, that, in this circumstance, Settling Defendants shall pay
11 \$2,500 in addition to any other payment required under this Consent Judgment. At any time,
12 CEH may withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the
13 result shall be as if CEH never issued any such Notice of Violation. If no informal resolution of a
14 Notice of Violation results within fifteen (15) days of a Notice of Election to contest, CEH may
15 file an enforcement motion or application pursuant to Section 4.1. The parties may extend this
16 fifteen (15) day time period by stipulation. In any such enforcement proceeding, CEH may seek
17 whatever fines, costs, penalties, attorneys' fees, or other remedies are provided by law for an
18 alleged failure to comply with the Consent Judgment, including but not limited to an order by the
19 Court requiring Settling Defendants to implement corrective action to remedy any violations of
20 this Consent Judgment. In the event CEH proves a violation of Section 3.1 in an enforcement
21 proceeding, the Court in its discretion may order that Settling Defendants cease selling any
22 affected Covered Products in California without a clear and reasonable warning pursuant to
23 Proposition 65. In any enforcement proceeding regarding this Consent Judgment, Settling
24 Defendants may assert any and all defenses that are available.

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

1 4.2.5.1 Settling Defendants shall include in their Notice of Election a
2 detailed description with supporting documentation of the corrective action(s) that they have
3 undertaken or propose to undertake to address the alleged violation. Any such correction shall, at
4 a minimum, provide reasonable assurance that all Covered Products having the same lot number
5 or lot code as that of the Covered Product identified in CEH's Notice of Violation (the "Noticed
6 Covered Products") will not be thereafter be sold or offered for sale to consumers in California by
7 retailer or distributor customers of Settling Defendants, nor shipped for sale in California by
8 Settling Defendants, without a clear and reasonable warning. Any such warning shall contain the
9 following statement:

10 **WARNING:** Consuming this product can expose you to chemicals including
11 acrylamide, which is known to the State of California to cause cancer [and birth
12 defects or other reproductive harm]. [Acrylamide is a chemical that can form in
13 some foods during high-temperature cooking processes, such as frying, roasting,
and baking.] For more information go to www.P65Warnings.ca.gov/food.

14 The word "WARNING" shall be displayed in all capital letters and bold print. The bracketed
15 terms may be provided at Settling Defendants' option. The warning statement shall be
16 prominently displayed on the Noticed Covered Product, on the packaging of the Noticed Covered
17 Product, or on a placard, shelf tag, or sign, provided that the statement is displayed with such
18 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
19 read and understood by an ordinary individual prior to sale. If the warning statement is displayed
20 on the Noticed Covered Product's label, it must be set off from other surrounding information and
21 enclosed in a text box. If the warning statement is displayed on a placard, shelf tag, or sign where
22 the Noticed Covered Product is offered for sale, the warning placard or sign must enable an
23 ordinary individual to easily determine which Noticed Covered Products the warning applies to,
24 and to differentiate between the Noticed Covered Products and other products to which the
25 warning statement does not apply. For sales by Settling Defendants on the internet or by catalog
26 where the consumer is not physically present, the warning statement shall be displayed in such a
27 manner that it is likely to be read and understood by an ordinary individual prior to the
28 authorization of or actual payment.

1 4.2.5.2 Settling Defendants shall make available to CEH for inspection and
2 copying records of non-privileged correspondence sufficient to show market withdrawal of and/or
3 the provision of warnings on the Noticed Covered Products to the extent they have such
4 documents on file. If the Notice of Violation is based on a violation of the Unit Level with
5 respect to a single Covered Product, Settling Defendants will be excused from the corrective
6 action obligation if Settling Defendants produce test results or other evidence that: (1)
7 demonstrates that the acrylamide levels found by CEH in the unit alleged to be in violation is an
8 aberration; and (2) otherwise provides reasonable assurance that the remainder of the Noticed
9 Covered Products, aside from the unit alleged to be in violation, comply with the Reformulation
10 Levels. The Parties agree that this Section 4.2.5.2 is satisfied if Settling Defendants can
11 demonstrate that the type of Covered Product at issue in the Notice of Violation satisfies the
12 applicable Average Level. However, to avail themselves of this provision, Settling Defendants
13 must provide CEH with all non-privileged acrylamide test data in their possession, custody, or
14 control pertaining to the type of Covered Product at issue in the Notice of Violation that was
15 performed within the year prior to the date of the Notice of Violation. If there is a dispute over
16 whether Settling Defendants are excused from the corrective action obligation, Settling
17 Defendants and CEH shall meet and confer before seeking any remedy in court.

18 4.2.5.3 If the Notice of Violation is the first, second, or third Notice of
19 Violation received by Settling Defendants under Section 4.2.1 that was not successfully contested
20 or withdrawn, then Settling Defendants shall pay \$15,000 for each Notice of Violation as the total
21 monetary amount. If Settling Defendants have received more than three (3) Notices of Violation
22 under Section 4.2.1 that were not successfully contested or withdrawn, then Settling Defendants
23 shall pay \$25,000 for each subsequent Notice of Violation. If Settling Defendants produce with
24 their Notice of Election test data for the Covered Product that: (i) was conducted prior to the date
25 CEH gave Notice of Violation; (ii) was conducted on the same type of Covered Product; and (iii)
26 demonstrates acrylamide levels below the Unit Level, then any payment under this Section shall
27 be reduced by 100 percent (100%) for the first Notice of Violation, by seventy-five percent (75%)
28 for the second Notice of Violation, and by fifty percent (50%) for any subsequent Notice of

1 Violation. If Settling Defendants are excused from the corrective action obligation pursuant to
2 Section 4.2.5.2, then Settling Defendants shall pay \$2,500 for that Notice of Violation. In no case
3 shall Settling Defendants be obligated to pay more than \$100,000 for all Notices of Violation not
4 successfully contested or withdrawn in any calendar year irrespective of the total number of
5 Notices of Violation issued. Nothing in Sections 4.2.5.1 or 4.2.5.2 (addressing non-contested
6 violations) shall impact the Court’s authority in an enforcement proceeding to impose appropriate
7 remedies for any contested Notices of Violation.

8 4.2.5.4 In no case shall CEH issue more than one Notice of Violation per
9 manufacturing lot of a type of Covered Product. CEH shall be limited to issuing no more than
10 two total Notices of Violation to Settling Defendants in the first three hundred and sixty-five
11 (365) days after the Compliance Date.

12 4.2.6 Payments. Any payments under Section 4.2 shall be made by check
13 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a
14 Notice of Election triggering a payment and shall be used as reimbursement for costs for
15 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse
16 attorneys’ fees and costs incurred in connection with these activities, and shall be the extent of all
17 monetary remedies available to CEH under this Consent Judgment for a non-contested Notice of
18 Violation.

19 4.3 **Repeat Violations.** If Settling Defendants have received three (3) or more
20 Notices of Violation concerning the same type of Covered Product that were not successfully
21 contested or withdrawn, as to the third and subsequent Notices of Violation in any two (2) year
22 period then, at CEH’s option, CEH may seek from Settling Defendants whatever fines, costs,
23 penalties, attorneys’ fees, or other remedies that are provided by law for failure to comply with
24 the Consent Judgment, including but not limited to issuing an order requiring that Settling
25 Defendants cease selling any affected Covered Products in California without a clear and
26 reasonable warning pursuant to Proposition 65. Prior to seeking such relief, CEH shall meet and
27 confer with Settling Defendants for at least thirty (30) days to determine if Settling Defendants
28

1 and CEH can agree on measures that Settling Defendants can undertake to prevent future alleged
2 violations.

3 **5. PAYMENTS**

4 5.1 **Payments by Settling Defendants.** Within thirty (30) calendar days of the
5 Effective Date, Settling Defendants shall pay the total sum of \$85,000 as a settlement payment as
6 further set forth in this Section.

7 5.2 **Allocation of Payments.** The total settlement amount for Settling
8 Defendants shall be paid in four (4) separate checks in the amounts specified below and delivered
9 as set forth below. Any failure by Settling Defendants to comply with the payment terms herein
10 shall be subject to a stipulated late fee to be paid by Settling Defendants to CEH in the amount of
11 \$100 for each day the full payment is not received after the payment due date set forth in Section
12 5.1. The late fees required under this Section shall be recoverable, together with reasonable
13 attorneys' fees, in an enforcement proceeding brought pursuant to Section 4 of this Consent
14 Judgment. The funds paid by Settling Defendants shall be allocated as set forth below between
15 the following categories and made payable as follows:

16 5.2.1 \$11,375 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).
17 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §
18 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
19 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
20 payment for \$8,531.25 shall be made payable to OEHHA and associated with taxpayer
21 identification number 68-0284486. This payment shall be delivered as follows:

22 For United States Postal Service Delivery:

23 Attn: Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 P.O. Box 4010, MS #19B
27 Sacramento, CA 95812-4010
28

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 \$2,843.75 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.2 \$8,525 as an Additional Settlement Payment (“ASP”) to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH intends to restrict use of the ASPs received from this Consent Judgment to the following purposes: the funds will be placed in CEH’s Toxics in Food Fund and used to support CEH programs and activities that seek to educate the public about acrylamide and other toxic chemicals in food, to work with the food industry and agriculture interests to reduce exposure to acrylamide and other toxic chemicals in food, and to thereby reduce the public health impacts and risks of exposure to acrylamide and other toxic chemicals in food sold in California. CEH shall obtain and maintain adequate records to document that ASPs are spent on these activities and CEH agrees to provide such documentation to the Attorney General within thirty (30) days of any request from the Attorney General. The payment pursuant to this Section shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.3 \$65,100 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) \$58,600 payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b) \$6,500 payable to the Center for Environmental Health and associated with taxpayer

1 identification number 94-3251981. These payments shall be delivered to Lexington Law Group,
2 503 Divisadero Street, San Francisco, CA 94117.

3 **6. MODIFICATION AND DISPUTE RESOLUTION**

4 6.1 **Modification.** This Consent Judgment may be modified from time to time
5 by express written agreement of the Parties, with the approval of the Court and prior notice to the
6 Attorney General's Office, or by an order of this Court upon motion and prior notice to the
7 Attorney General's Office and in accordance with law. Any modification of this Consent
8 Judgment shall not impact Settling Defendants' initial payment obligations under Section 5.

9 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent
10 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a
11 motion to modify the Consent Judgment.

12 6.3 **Other CEH Settlements.** Settling Defendants may move to modify this
13 Consent Judgment to substitute a higher Reformulation Level that CEH agrees to in a future
14 consent judgment applicable to products similar to the Covered Products, and CEH agrees not to
15 oppose any such motion except for good cause shown. Any such modification shall only apply to
16 Covered Products that are similar to those products that are subject to a higher Reformulation
17 Level.

18 6.4 **Other Court Decisions Regarding Similar Products.** If a final decision
19 of a court determines that warnings for acrylamide exposures or that enforcement of Proposition
20 65 claims for acrylamide exposures are preempted or otherwise unlawful or unconstitutional with
21 respect to products similar to the Covered Products, then Settling Defendants may move to
22 modify this Consent Judgment to conform to such ruling in order to avoid unfair, inconsistent, or
23 anti-competitive results.

24 6.5 **Change in Proposition 65.** If Proposition 65 or its implementing
25 regulations (including but not limited to the "safe harbor no significant risk level" for acrylamide
26 set forth at Cal. Code Regs., tit. 27, section 25705, subdivision (c)(2) or any "alternative risk
27 level" adopted by regulation or court decision) are changed from their terms as they exist on the
28 date of entry of this Consent Judgment in a manner that impacts the Reformulation Levels, or if

1 OEHHA takes some other final regulatory action for products similar to the Covered Product in a
2 manner that impacts the Reformulation Levels or that determines that warnings for acrylamide are
3 not required for such products, then Settling Defendants may seek to modify this Consent
4 Judgment to modify the Reformulation Levels. The Parties recognize that the Reformulation
5 Levels are based on a compromise of a number of issues, and that a change to the “safe harbor no
6 significant risk level” for acrylamide would not necessarily entitle a Party to a modification of the
7 terms of this Consent Judgment corresponding in a linear relationship with such a change.

8 **6.7 Federal Agency Action and Preemption.** If a court of competent jurisdiction or
9 an agency of the federal government, including, but not limited to the U.S. Food and Drug
10 Administration, states through any guidance, regulation, or other legally binding act that federal
11 law has preemptive effect on any of the requirements of this Consent Judgment, then this Consent
12 Judgment may be modified in accordance with the procedure for noticed motions set forth in
13 Section 6.1 to bring it into compliance with or avoid conflict with federal law. Any such
14 modification shall be limited to those changes that are necessary to bring this Consent Judgment
15 into compliance with or avoid conflict with federal law.

16 **7. CLAIMS COVERED AND RELEASE**

17 **7.1** Provided that Settling Defendants comply in full with their obligations under
18 Section 5 hereof, this Consent Judgment is a full, final, and binding resolution between CEH on
19 behalf of itself and the public interest and Settling Defendants and their parents, subsidiaries,
20 affiliated entities that are under common ownership, directors, officers, employees, agents,
21 shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which
22 Settling Defendants directly or indirectly distribute or sell Covered Products, including but not
23 limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees
24 (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn
25 about alleged exposure to acrylamide contained in Covered Products that were purchased,
26 manufactured, distributed, shipped, sold, or offered for sale by Settling Defendants prior to the
27 Compliance Date, even if such products are sold in California or to California consumers after the
28 Compliance Date.

1 7.2 Provided that Settling Defendants comply in full with their obligations under
2 Section 5 hereof, CEH, for itself, its agents, successors and assigns, releases, waives, and forever
3 discharges any and all claims against Settling Defendants, Defendant Releasees, and Downstream
4 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
5 common law claims that have been or could have been asserted by CEH individually or in the
6 public interest regarding the failure to warn about exposure to acrylamide arising in connection
7 with Covered Products that were purchased, manufactured, distributed, shipped, sold, or offered
8 for sale by Settling Defendants prior to the Compliance Date, even if such products are sold in
9 California or to California consumers after the Compliance Date.

10 7.3 Provided that Settling Defendants comply in full with their obligations under
11 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendants
12 shall constitute compliance with Proposition 65 by Settling Defendants, Defendant Releasees, and
13 Downstream Defendant Releasees with respect to any alleged failure to warn about acrylamide in
14 Covered Products manufactured, distributed, or sold by Settling Defendants after the Compliance
15 Date.

16 **8. PROVISION OF NOTICE**

17 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
18 notice shall be sent by first class and electronic mail to:

19 Howard Hirsch
20 Lexington Law Group
21 503 Divisadero Street
22 San Francisco, CA 94117
23 hhirsch@lexlawgroup.com

24 8.2 When Settling Defendants are entitled to receive any notice under this
25 Consent Judgment, the notice shall be sent by first class and electronic mail to:

26 David T. Biderman
27 Perkins Coie LLP
28 1888 Century Park East, Suite 1700
29 Los Angeles, CA 90067-1721
30 DBiderman@perkinscoie.com

Rachel Porter
General Mills, Inc.
Number One General Mills Blvd.
Minneapolis, MN 55426
Rachel.Porter@genmills.com

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

9. COURT APPROVAL

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

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

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

Within ten (10) days of receiving the initial payments as required by Section 5.1, CEH shall dismiss all other defendants besides Settling Defendants that are named in this action without prejudice, and those defendants shall waive all costs in this action.

10. GOVERNING LAW AND CONSTRUCTION

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

1 **11. ATTORNEYS' FEES**

2 11.1 Should CEH prevail on any motion, application for an order to show cause,
3 or other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
4 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
5 Settling Defendants prevail on any motion, application for an order to show cause, or other
6 proceeding, Settling Defendants may be awarded their reasonable attorneys' fees and costs as a
7 result of such motion or application upon a finding by the Court that CEH's prosecution of the
8 motion or application lacked substantial justification. For purposes of this Consent Judgment, the
9 term substantial justification shall carry the same meaning as used in the Civil Discovery Act of
10 1986, Code of Civil Procedure §§ 2016, *et seq.*

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

13 **12. ENTIRE AGREEMENT**

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

1 **13. RETENTION OF JURISDICTION**

2 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

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

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

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

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

16 **16. SUCCESSORS AND ASSIGNS**

17 16.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
18 Defendants, and their respective divisions, subdivisions, and subsidiaries, and the successors or
19 assigns of any of them.

20 **17. COMPLIANCE WITH REPORTING REQUIREMENTS**

21 17.1 CEH agrees to comply with the reporting form requirements referenced in
22 Health and Safety Code section 25249.7(f).

23 **18. EXECUTION IN COUNTERPARTS**

24 18.1 The stipulations to this Consent Judgment may be executed in counterparts
25 and by means of facsimile or portable document format (pdf), which taken together shall be
26 deemed to constitute one document.

1 **IT IS SO ORDERED, ADJUDGED, AND**
2 **DECREED.**
3
4

5 Dated: _____
6
7 Judge of the Superior Court

8 **IT IS SO STIPULATED:**
9

10 Dated: February 19, 2021

CENTER FOR ENVIRONMENTAL HEALTH

11 
12

Signature

13
14 Michael Green

Printed Name

15
16 CEO

Title

17
18 Dated: _____, 2021

GENERAL MILLS, INC.

19
20
21 _____
Signature

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23 _____
Printed Name

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Title

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

| | | |
|------------------------------------|---|--|
| CENTER FOR ENVIRONMENTAL HEALTH, |) | Case No. RG 17-881932 |
| |) | |
| Plaintiff, |) | [PROPOSED] CONSENT |
| |) | JUDGMENT AS TO GENERAL |
| v. |) | MILLS, INC., ANNIE’S, INC., AND |
| |) | ANNIE’S HOMEGROWN, INC. |
| BARREL O’FUN SNACK FOODS CO., LLC, |) | |
| <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |
| |) | |

1. DEFINITIONS

- 1.1 The “Complaint” means the operative First Amended Complaint in the above-captioned matter.
- 1.2 “Compliance Date” shall mean May 1, 2021.
- 1.3 “Covered Products” means Annie’s Homegrown Organic Animal Cookies.
- 1.4 “Effective Date” means the date on which notice of entry of this Consent Judgment by the Court is served upon Settling Defendants.

2. INTRODUCTION

2.1 The Parties to this Consent Judgment are the Center for Environmental Health a California non-profit corporation (“CEH”), on the one hand, and General Mills, Inc.,

1 Annie's, Inc., and Annie's Homegrown, Inc. ("Settling Defendants"), on the other hand. CEH
2 and Settling Defendants (the "Parties") enter into this Consent Judgment to settle certain claims
3 asserted by CEH against Settling Defendants as set forth in the Complaint.

4 2.2 On or about July 25, 2019, CEH provided a 60-day Notice of Violation of
5 Proposition 65 to the California Attorney General, the District Attorneys of every county in
6 California, the City Attorneys of every California city with a population greater than 750,000, and
7 to Settling Defendants, alleging that Settling Defendants violated Proposition 65 by exposing
8 persons in California to acrylamide contained in Covered Products without first providing a clear
9 and reasonable Proposition 65 warning (the "Notice").

10 2.3 Each Settling Defendant is a corporation or other business entity that
11 manufactures, distributes, sells, and/or offers for sale Covered Products that are sold in the State
12 of California or has done so at times relevant to the Complaint.

13 2.4 On November 9, 2017, CEH filed the initial Complaint in the above-
14 captioned matter, naming Settling Defendant General Mills, Inc. as an original defendant with
15 respect to alleged acrylamide exposures from different products than the Covered Products. On
16 November 20, 2019, CEH filed the Complaint, naming Settling Defendants as defendants with
17 respect to alleged acrylamide exposures from the Covered Products.

18 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this
19 Court has jurisdiction over the allegations of violations contained in the Complaint and personal
20 jurisdiction over Settling Defendants as to the acts alleged in the Complaint, that venue is proper
21 in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent
22 Judgment as a full and final resolution of all claims which were or could have been raised in the
23 Complaint based on the facts alleged therein and in the Notice with respect to Covered Products
24 manufactured, distributed, and/or sold by Settling Defendants. The Parties agree and
25 acknowledge that this Consent Judgment does not resolve CEH's claims in the Complaint against
26 Settling Defendants with respect to acrylamide exposures from Betty Crocker Molasses Cookie
27 Mix.

28 2.6 Nothing in this Consent Judgment is or shall be construed as an admission

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

8 **3. INJUNCTIVE RELIEF**

9 **3.1 Reformulation of Covered Products.** After the Compliance Date, Settling
10 Defendants shall not purchase or manufacture Covered Products that will be sold or offered for
11 sale in California which do not meet the Reformulation Levels in sections 3.1.1-3.1.2 below.
12 Covered Products purchased, manufactured, distributed, shipped or sold by Settling Defendants
13 prior to the Compliance Date are not subject to the injunctive relief requirements of Section 3,
14 even if such products are sold in California or to California consumers after the Effective Date.

15 **3.1.1** The average acrylamide concentration shall not exceed 175 parts per
16 billion (“ppb”) by weight (the “Average Level”).

17 **3.1.2** The acrylamide concentration of any individual unit of Covered Products
18 shall not exceed 200 ppb by weight (the “Unit Level”), based on a representative composite
19 sample taken from the individual unit being tested.

20 **3.2 Average Level Determination.** The Average Level is determined by
21 randomly selecting and testing at least one (1) sample each from at least five (5) and up to ten
22 (10) different lots of a particular Covered Product (or the maximum number of lots available for
23 testing if fewer than three) during a testing period of at least 365 days. The mean and standard
24 deviation shall be calculated using the sampling data. Any data points that are more than three
25 standard deviations outside the mean shall be discarded, and the mean and standard deviation
26 recalculated using the remaining data points. The mean determined in accordance with this
27 procedure shall be deemed the “Average Level.” Alternatively, the Average Level may be
28 determined in accordance with any applicable Proposition 65 regulations.

1 3.3 **Compliance Testing.** Compliance with the Reformulation Levels shall be
2 determined by use of a test performed by an accredited laboratory using either GC/MS (Gas
3 Chromatograph/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry) or
4 any other testing method agreed upon by the Parties.

5 **4. ENFORCEMENT**

6 4.1 **General Enforcement Provisions.** CEH may, by motion or application for an
7 order to show cause before this Court, enforce the terms and conditions contained in this Consent
8 Judgment. Any action to enforce alleged violations of Section 3.1 by a Settling Defendant shall
9 be brought exclusively pursuant to this Section 4, and be subject to the meet and confer
10 requirement of Section 4.2.4 if applicable.

11 4.2 **Enforcement of Reformulation Commitment.**

12 4.2.1 Notice of Violation. In the event that CEH purchases a Covered Product in
13 California that was manufactured, distributed, sold or offered for sale by a Settling Defendant
14 with a best-by or sell-by (or equivalent) date or other code that reflects that the Covered Product
15 was manufactured on or after the Compliance Date, and for which CEH has laboratory test results
16 showing that the Covered Product has an acrylamide level exceeding the Unit Level, then CEH
17 may issue a Notice of Violation pursuant to this Section. If the manufacturer or purchase date is
18 not apparent from the dates or coding used on the Covered Product label, CEH shall withdraw the
19 Notice of Violation if Settling Defendants demonstrate that the Covered Product at issue was
20 manufactured or purchased by Settling Defendants before the Compliance Date. Such Notice of
21 Violation shall be based upon a test result sufficient to establish an exceedance of the Unit Level
22 as it is to be evaluated under the sampling and testing criteria described in Section 3 above.

23 4.2.2 Service of Notice of Violation and Supporting Documentation.

24 4.2.2.1 The Notice of Violation shall be sent to the person(s) identified
25 in Section 8.2 to receive notices for Settling Defendants, and must be served within thirty (30)
26 days of the later of the date the Covered Product at issue was purchased or otherwise acquired by
27 CEH or the date that CEH can reasonably determine that the Covered Product at issue was
28 manufactured, distributed, shipped, sold, or offered for sale by a Settling Defendant, provided,

1 however, that CEH may have up to an additional thirty (30) days to send the Notice of Violation
2 if, notwithstanding CEH's good faith efforts, the test data required by Section 4.2.2.2 below
3 cannot be obtained by CEH from its laboratory before expiration of the initial thirty (30) day
4 period.

5 4.2.2.2 The Notice of Violation shall, at a minimum, set forth: (a) the
6 date the Covered Product was purchased; (b) the location at which the Covered Product was
7 purchased; (c) a description of the Covered Product giving rise to the alleged violation, including
8 the name and address of the retail entity from which the sample was obtained and pictures of the
9 product packaging from all sides, which identifies the product lot and (d) all test data obtained by
10 CEH regarding the Covered Product and supporting documentation sufficient for validation of the
11 test results, including any laboratory reports, quality assurance reports, and quality control reports
12 associated with testing of the Covered Product.

13 4.2.3 Notice of Election of Response. No more than thirty (30) days after
14 effectuation of service of a Notice of Violation, Settling Defendants shall provide written notice
15 to CEH whether they elect to contest the allegations contained in a Notice of Violation ("Notice
16 of Election"). Failure to provide a Notice of Election within thirty (30) days of effectuation of
17 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.
18 Upon notice to CEH, Settling Defendants shall be granted up to an additional thirty (30) days to
19 elect a response if, notwithstanding Settling Defendants' good faith efforts, Settling Defendants
20 are unable to verify the test data provided by CEH in the Notice of Violation before the expiration
21 of the initial thirty (30) day period.

22 4.2.3.1 If a Notice of Violation is contested, the Notice of Election shall
23 include all then-available documents upon which Settling Defendants are relying to contest the
24 alleged violation, including all then-available non-privileged test data. If a Settling Defendant or
25 CEH later acquires additional test or other non-privileged data regarding the alleged violation
26 during the meet and confer period described in Section 4.2.4, it shall notify the other Party and
27 promptly provide all such non-privileged data or information to the Party unless either the Notice
28 of Violation or Notice of Election has been withdrawn.

1 4.2.3.2 Settling Defendants can successfully contest a Notice of Violation
2 if they produce with their Notice of Election a copy of correspondence dated before the time of
3 the purchase that triggered CEH's Notice of Violation, to a person and/or entity that caused the
4 Covered Product to be sold in California, instructing that person and/or entity to cease offering
5 the Covered Product(s) for sale in California.

6 4.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and Settling
7 Defendants shall meet and confer to attempt to resolve their dispute. Within fifteen (15) days of
8 serving a Notice of Election contesting a Notice of Violation, Settling Defendants may withdraw
9 the original Notice of Election contesting the violation and serve a new Notice of Election to not
10 contest the violation, provided, however, that, in this circumstance, Settling Defendants shall pay
11 \$2,500 in addition to any other payment required under this Consent Judgment. At any time,
12 CEH may withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the
13 result shall be as if CEH never issued any such Notice of Violation. If no informal resolution of a
14 Notice of Violation results within fifteen (15) days of a Notice of Election to contest, CEH may
15 file an enforcement motion or application pursuant to Section 4.1. The parties may extend this
16 fifteen (15) day time period by stipulation. In any such enforcement proceeding, CEH may seek
17 whatever fines, costs, penalties, attorneys' fees, or other remedies are provided by law for an
18 alleged failure to comply with the Consent Judgment, including but not limited to an order by the
19 Court requiring Settling Defendants to implement corrective action to remedy any violations of
20 this Consent Judgment. In the event CEH proves a violation of Section 3.1 in an enforcement
21 proceeding, the Court in its discretion may order that Settling Defendants cease selling any
22 affected Covered Products in California without a clear and reasonable warning pursuant to
23 Proposition 65. In any enforcement proceeding regarding this Consent Judgment, Settling
24 Defendants may assert any and all defenses that are available.

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

1 4.2.5.1 Settling Defendants shall include in their Notice of Election a
2 detailed description with supporting documentation of the corrective action(s) that they have
3 undertaken or propose to undertake to address the alleged violation. Any such correction shall, at
4 a minimum, provide reasonable assurance that all Covered Products having the same lot number
5 or lot code as that of the Covered Product identified in CEH's Notice of Violation (the "Noticed
6 Covered Products") will not be thereafter be sold or offered for sale to consumers in California by
7 retailer or distributor customers of Settling Defendants, nor shipped for sale in California by
8 Settling Defendants, without a clear and reasonable warning. Any such warning shall contain the
9 following statement:

10 **WARNING:** Consuming this product can expose you to chemicals including
11 acrylamide, which is known to the State of California to cause cancer [and birth
12 defects or other reproductive harm]. [Acrylamide is a chemical that can form in
13 some foods during high-temperature cooking processes, such as frying, roasting,
and baking.] For more information go to www.P65Warnings.ca.gov/food.

14 The word "WARNING" shall be displayed in all capital letters and bold print. The bracketed
15 terms may be provided at Settling Defendants' option. The warning statement shall be
16 prominently displayed on the Noticed Covered Product, on the packaging of the Noticed Covered
17 Product, or on a placard, shelf tag, or sign, provided that the statement is displayed with such
18 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
19 read and understood by an ordinary individual prior to sale. If the warning statement is displayed
20 on the Noticed Covered Product's label, it must be set off from other surrounding information and
21 enclosed in a text box. If the warning statement is displayed on a placard, shelf tag, or sign where
22 the Noticed Covered Product is offered for sale, the warning placard or sign must enable an
23 ordinary individual to easily determine which Noticed Covered Products the warning applies to,
24 and to differentiate between the Noticed Covered Products and other products to which the
25 warning statement does not apply. For sales by Settling Defendants on the internet or by catalog
26 where the consumer is not physically present, the warning statement shall be displayed in such a
27 manner that it is likely to be read and understood by an ordinary individual prior to the
28 authorization of or actual payment.

1 4.2.5.2 Settling Defendants shall make available to CEH for inspection and
2 copying records of non-privileged correspondence sufficient to show market withdrawal of and/or
3 the provision of warnings on the Noticed Covered Products to the extent they have such
4 documents on file. If the Notice of Violation is based on a violation of the Unit Level with
5 respect to a single Covered Product, Settling Defendants will be excused from the corrective
6 action obligation if Settling Defendants produce test results or other evidence that: (1)
7 demonstrates that the acrylamide levels found by CEH in the unit alleged to be in violation is an
8 aberration; and (2) otherwise provides reasonable assurance that the remainder of the Noticed
9 Covered Products, aside from the unit alleged to be in violation, comply with the Reformulation
10 Levels. The Parties agree that this Section 4.2.5.2 is satisfied if Settling Defendants can
11 demonstrate that the type of Covered Product at issue in the Notice of Violation satisfies the
12 applicable Average Level. However, to avail themselves of this provision, Settling Defendants
13 must provide CEH with all non-privileged acrylamide test data in their possession, custody, or
14 control pertaining to the type of Covered Product at issue in the Notice of Violation that was
15 performed within the year prior to the date of the Notice of Violation. If there is a dispute over
16 whether Settling Defendants are excused from the corrective action obligation, Settling
17 Defendants and CEH shall meet and confer before seeking any remedy in court.

18 4.2.5.3 If the Notice of Violation is the first, second, or third Notice of
19 Violation received by Settling Defendants under Section 4.2.1 that was not successfully contested
20 or withdrawn, then Settling Defendants shall pay \$15,000 for each Notice of Violation as the total
21 monetary amount. If Settling Defendants have received more than three (3) Notices of Violation
22 under Section 4.2.1 that were not successfully contested or withdrawn, then Settling Defendants
23 shall pay \$25,000 for each subsequent Notice of Violation. If Settling Defendants produce with
24 their Notice of Election test data for the Covered Product that: (i) was conducted prior to the date
25 CEH gave Notice of Violation; (ii) was conducted on the same type of Covered Product; and (iii)
26 demonstrates acrylamide levels below the Unit Level, then any payment under this Section shall
27 be reduced by 100 percent (100%) for the first Notice of Violation, by seventy-five percent (75%)
28 for the second Notice of Violation, and by fifty percent (50%) for any subsequent Notice of

1 Violation. If Settling Defendants are excused from the corrective action obligation pursuant to
2 Section 4.2.5.2, then Settling Defendants shall pay \$2,500 for that Notice of Violation. In no case
3 shall Settling Defendants be obligated to pay more than \$100,000 for all Notices of Violation not
4 successfully contested or withdrawn in any calendar year irrespective of the total number of
5 Notices of Violation issued. Nothing in Sections 4.2.5.1 or 4.2.5.2 (addressing non-contested
6 violations) shall impact the Court's authority in an enforcement proceeding to impose appropriate
7 remedies for any contested Notices of Violation.

8 4.2.5.4 In no case shall CEH issue more than one Notice of Violation per
9 manufacturing lot of a type of Covered Product. CEH shall be limited to issuing no more than
10 two total Notices of Violation to Settling Defendants in the first three hundred and sixty-five
11 (365) days after the Compliance Date.

12 4.2.6 Payments. Any payments under Section 4.2 shall be made by check
13 payable to the "Lexington Law Group" and shall be paid within thirty (30) days of service of a
14 Notice of Election triggering a payment and shall be used as reimbursement for costs for
15 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse
16 attorneys' fees and costs incurred in connection with these activities, and shall be the extent of all
17 monetary remedies available to CEH under this Consent Judgment for a non-contested Notice of
18 Violation.

19 4.3 **Repeat Violations.** If Settling Defendants have received three (3) or more
20 Notices of Violation concerning the same type of Covered Product that were not successfully
21 contested or withdrawn, as to the third and subsequent Notices of Violation in any two (2) year
22 period then, at CEH's option, CEH may seek from Settling Defendants whatever fines, costs,
23 penalties, attorneys' fees, or other remedies that are provided by law for failure to comply with
24 the Consent Judgment, including but not limited to issuing an order requiring that Settling
25 Defendants cease selling any affected Covered Products in California without a clear and
26 reasonable warning pursuant to Proposition 65. Prior to seeking such relief, CEH shall meet and
27 confer with Settling Defendants for at least thirty (30) days to determine if Settling Defendants
28

1 and CEH can agree on measures that Settling Defendants can undertake to prevent future alleged
2 violations.

3 **5. PAYMENTS**

4 5.1 **Payments by Settling Defendants.** Within thirty (30) calendar days of the
5 Effective Date, Settling Defendants shall pay the total sum of \$85,000 as a settlement payment as
6 further set forth in this Section.

7 5.2 **Allocation of Payments.** The total settlement amount for Settling
8 Defendants shall be paid in four (4) separate checks in the amounts specified below and delivered
9 as set forth below. Any failure by Settling Defendants to comply with the payment terms herein
10 shall be subject to a stipulated late fee to be paid by Settling Defendants to CEH in the amount of
11 \$100 for each day the full payment is not received after the payment due date set forth in Section
12 5.1. The late fees required under this Section shall be recoverable, together with reasonable
13 attorneys' fees, in an enforcement proceeding brought pursuant to Section 4 of this Consent
14 Judgment. The funds paid by Settling Defendants shall be allocated as set forth below between
15 the following categories and made payable as follows:

16 5.2.1 \$11,375 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).
17 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §
18 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
19 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
20 payment for \$8,531.25 shall be made payable to OEHHA and associated with taxpayer
21 identification number 68-0284486. This payment shall be delivered as follows:

22 For United States Postal Service Delivery:

23 Attn: Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 P.O. Box 4010, MS #19B
27 Sacramento, CA 95812-4010
28

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 \$2,843.75 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.2 \$8,525 as an Additional Settlement Payment (“ASP”) to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH intends to restrict use of the ASPs received from this Consent Judgment to the following purposes: the funds will be placed in CEH’s Toxics in Food Fund and used to support CEH programs and activities that seek to educate the public about acrylamide and other toxic chemicals in food, to work with the food industry and agriculture interests to reduce exposure to acrylamide and other toxic chemicals in food, and to thereby reduce the public health impacts and risks of exposure to acrylamide and other toxic chemicals in food sold in California. CEH shall obtain and maintain adequate records to document that ASPs are spent on these activities and CEH agrees to provide such documentation to the Attorney General within thirty (30) days of any request from the Attorney General. The payment pursuant to this Section shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.3 \$65,100 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) \$58,600 payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b) \$6,500 payable to the Center for Environmental Health and associated with taxpayer

1 identification number 94-3251981. These payments shall be delivered to Lexington Law Group,
2 503 Divisadero Street, San Francisco, CA 94117.

3 **6. MODIFICATION AND DISPUTE RESOLUTION**

4 6.1 **Modification.** This Consent Judgment may be modified from time to time
5 by express written agreement of the Parties, with the approval of the Court and prior notice to the
6 Attorney General's Office, or by an order of this Court upon motion and prior notice to the
7 Attorney General's Office and in accordance with law. Any modification of this Consent
8 Judgment shall not impact Settling Defendants' initial payment obligations under Section 5.

9 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent
10 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a
11 motion to modify the Consent Judgment.

12 6.3 **Other CEH Settlements.** Settling Defendants may move to modify this
13 Consent Judgment to substitute a higher Reformulation Level that CEH agrees to in a future
14 consent judgment applicable to products similar to the Covered Products, and CEH agrees not to
15 oppose any such motion except for good cause shown. Any such modification shall only apply to
16 Covered Products that are similar to those products that are subject to a higher Reformulation
17 Level.

18 6.4 **Other Court Decisions Regarding Similar Products.** If a final decision
19 of a court determines that warnings for acrylamide exposures or that enforcement of Proposition
20 65 claims for acrylamide exposures are preempted or otherwise unlawful or unconstitutional with
21 respect to products similar to the Covered Products, then Settling Defendants may move to
22 modify this Consent Judgment to conform to such ruling in order to avoid unfair, inconsistent, or
23 anti-competitive results.

24 6.5 **Change in Proposition 65.** If Proposition 65 or its implementing
25 regulations (including but not limited to the "safe harbor no significant risk level" for acrylamide
26 set forth at Cal. Code Regs., tit. 27, section 25705, subdivision (c)(2) or any "alternative risk
27 level" adopted by regulation or court decision) are changed from their terms as they exist on the
28 date of entry of this Consent Judgment in a manner that impacts the Reformulation Levels, or if

1 OEHHA takes some other final regulatory action for products similar to the Covered Product in a
2 manner that impacts the Reformulation Levels or that determines that warnings for acrylamide are
3 not required for such products, then Settling Defendants may seek to modify this Consent
4 Judgment to modify the Reformulation Levels. The Parties recognize that the Reformulation
5 Levels are based on a compromise of a number of issues, and that a change to the “safe harbor no
6 significant risk level” for acrylamide would not necessarily entitle a Party to a modification of the
7 terms of this Consent Judgment corresponding in a linear relationship with such a change.

8 **6.7 Federal Agency Action and Preemption.** If a court of competent jurisdiction or
9 an agency of the federal government, including, but not limited to the U.S. Food and Drug
10 Administration, states through any guidance, regulation, or other legally binding act that federal
11 law has preemptive effect on any of the requirements of this Consent Judgment, then this Consent
12 Judgment may be modified in accordance with the procedure for noticed motions set forth in
13 Section 6.1 to bring it into compliance with or avoid conflict with federal law. Any such
14 modification shall be limited to those changes that are necessary to bring this Consent Judgment
15 into compliance with or avoid conflict with federal law.

16 **7. CLAIMS COVERED AND RELEASE**

17 **7.1** Provided that Settling Defendants comply in full with their obligations under
18 Section 5 hereof, this Consent Judgment is a full, final, and binding resolution between CEH on
19 behalf of itself and the public interest and Settling Defendants and their parents, subsidiaries,
20 affiliated entities that are under common ownership, directors, officers, employees, agents,
21 shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which
22 Settling Defendants directly or indirectly distribute or sell Covered Products, including but not
23 limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees
24 (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn
25 about alleged exposure to acrylamide contained in Covered Products that were purchased,
26 manufactured, distributed, shipped, sold, or offered for sale by Settling Defendants prior to the
27 Compliance Date, even if such products are sold in California or to California consumers after the
28 Compliance Date.

1 7.2 Provided that Settling Defendants comply in full with their obligations under
2 Section 5 hereof, CEH, for itself, its agents, successors and assigns, releases, waives, and forever
3 discharges any and all claims against Settling Defendants, Defendant Releasees, and Downstream
4 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
5 common law claims that have been or could have been asserted by CEH individually or in the
6 public interest regarding the failure to warn about exposure to acrylamide arising in connection
7 with Covered Products that were purchased, manufactured, distributed, shipped, sold, or offered
8 for sale by Settling Defendants prior to the Compliance Date, even if such products are sold in
9 California or to California consumers after the Compliance Date.

10 7.3 Provided that Settling Defendants comply in full with their obligations under
11 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendants
12 shall constitute compliance with Proposition 65 by Settling Defendants, Defendant Releasees, and
13 Downstream Defendant Releasees with respect to any alleged failure to warn about acrylamide in
14 Covered Products manufactured, distributed, or sold by Settling Defendants after the Compliance
15 Date.

16 **8. PROVISION OF NOTICE**

17 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
18 notice shall be sent by first class and electronic mail to:

19 Howard Hirsch
20 Lexington Law Group
21 503 Divisadero Street
22 San Francisco, CA 94117
23 hhirsch@lexlawgroup.com

24 8.2 When Settling Defendants are entitled to receive any notice under this
25 Consent Judgment, the notice shall be sent by first class and electronic mail to:

26 David T. Biderman
27 Perkins Coie LLP
28 1888 Century Park East, Suite 1700
29 Los Angeles, CA 90067-1721
30 DBiderman@perkinscoie.com

Rachel Porter
General Mills, Inc.
Number One General Mills Blvd.
Minneapolis, MN 55426
Rachel.Porter@genmills.com

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

9. COURT APPROVAL

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

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

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

Within ten (10) days of receiving the initial payments as required by Section 5.1, CEH shall dismiss all other defendants besides Settling Defendants that are named in this action without prejudice, and those defendants shall waive all costs in this action.

10. GOVERNING LAW AND CONSTRUCTION

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

1 **11. ATTORNEYS' FEES**

2 11.1 Should CEH prevail on any motion, application for an order to show cause,
3 or other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
4 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
5 Settling Defendants prevail on any motion, application for an order to show cause, or other
6 proceeding, Settling Defendants may be awarded their reasonable attorneys' fees and costs as a
7 result of such motion or application upon a finding by the Court that CEH's prosecution of the
8 motion or application lacked substantial justification. For purposes of this Consent Judgment, the
9 term substantial justification shall carry the same meaning as used in the Civil Discovery Act of
10 1986, Code of Civil Procedure §§ 2016, *et seq.*

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

13 **12. ENTIRE AGREEMENT**

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

1 **13. RETENTION OF JURISDICTION**

2 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

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

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

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

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

16 **16. SUCCESSORS AND ASSIGNS**

17 16.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
18 Defendants, and their respective divisions, subdivisions, and subsidiaries, and the successors or
19 assigns of any of them.

20 **17. COMPLIANCE WITH REPORTING REQUIREMENTS**

21 17.1 CEH agrees to comply with the reporting form requirements referenced in
22 Health and Safety Code section 25249.7(f).

23 **18. EXECUTION IN COUNTERPARTS**

24 18.1 The stipulations to this Consent Judgment may be executed in counterparts
25 and by means of facsimile or portable document format (pdf), which taken together shall be
26 deemed to constitute one document.

1 **IT IS SO ORDERED, ADJUDGED, AND**
2 **DECREED.**
3
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5 Dated: _____
6
7 Judge of the Superior Court

8 **IT IS SO STIPULATED:**
9

10 Dated: February 19, 2021

CENTER FOR ENVIRONMENTAL HEALTH

11 
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Signature

13
14 Michael Green

Printed Name

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16 CEO

Title

17
18 Dated: _____, 2021

GENERAL MILLS, INC.

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21 _____
Signature

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23 _____
Printed Name

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Title

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

Dated: _____
Judge of the Superior Court

IT IS SO STIPULATED:

Dated: _____, 2021 **CENTER FOR ENVIRONMENTAL HEALTH**

Signature

Printed Name

Title

Dated: 2/17/2021, 2021 **GENERAL MILLS, INC.**

DocuSigned by:
Emily Thomas
82DC3835E4334B3...
Signature

Emily Thomas

Printed Name

VP/Managing Director, 3BOU

Title

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Dated: 2/15/2021, 2021

**ANNIE’S, INC. AND ANNIE’S
HOMEGROWN, INC.**

DocuSigned by:
Emily Thomas
82DC3835E4334B3...
Signature

Emily Thomas
Printed Name

VP/Managing Director, 3BOU
Title