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16 Attorneys for Plaintiff

17 ENVIRONMENTAL DEMOCRACY PROJECT

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 FOR THE COUNTY OF ALAMEDA

20 ENVIRONMENTAL DEMOCRACY )  
21 PROJECT, a non-profit corporation, )  
22 )  
23 Plaintiff, )  
24 )  
25 v. )  
26 SNACKERZ, INC.; and DOES 1 through 10, )  
27 inclusive, )  
28 Defendants. )

Case No. RG21112787  
Assigned for All Purposes to:  
Judge Tara Desautels, Dept. 16  
**[PROPOSED] CONSENT JUDGMENT  
RE: SNACKERZ, INC.**

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**1. INTRODUCTION**

1.1 The Parties to this Consent Judgment are Plaintiff Environmental Democracy Project, a California non-profit corporation (“EDP”) and Defendant Snackerz, Inc. (“Settling Defendant”). EDP and Settling Defendant (the “Parties”) enter into this Consent Judgment to settle certain claims asserted by EDP against Settling Defendant as set forth in the operative complaint (“Complaint”) in this action.

1.2 On or about June 15, 2021, EDP provided a 60-day Notice of Violation of Proposition 65 to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000, and to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons to lead contained in saladitos (dried and salted plums) without first providing a clear and reasonable Proposition 65 warning.

1.3 Settling Defendant is a corporation or other business entity that manufactures, distributes, sells, or offers for sale saladitos (dried and salted plums) that are sold in the State of California or has done so in the past.

1.4 On September 10, 2021, EDP filed the original Complaint in the above-captioned matter naming Settling Defendant as defendant.

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

1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,

1 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
2 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any  
3 other pending or future legal proceedings. This Consent Judgment is the product of negotiation  
4 and compromise and is accepted by the Parties solely for purposes of settling, compromising, and  
5 resolving issues disputed in this action.

## 6 **2. DEFINITIONS**

7 2.1 The “Complaint” means the operative complaint in the above-captioned matter.

8 2.2 “Covered Products” means saladitos. Saladitos are plums that are dried and covered with  
9 salt or chili

10 2.3 “Effective Date” means the date on which notice of entry of this Consent Judgment by the  
11 Court is served upon Settling Defendant.

## 12 **3. INJUNCTIVE RELIEF**

13 3.1 **Cessation of Sales of All Saladitos.** As of the Effective Date, Settling Defendant shall  
14 cease all purchases and sales of Covered Products.

15 3.2 **Recall of All Saladitos.** As of the Effective Date, to the extent it has not done so already,  
16 Settling Defendant shall use its best efforts to recall all Covered Products from the California and  
17 national marketplace including but not limited recalling the products from Settling Defendant’s  
18 wholesale customers.

## 19 **4. ENFORCEMENT**

20 4.1 **General Enforcement Provisions.** The parties may, by motion or application for an  
21 order to show cause before this Court, enforce the terms and conditions contained in this Consent  
22 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3  
23 above, the moving party shall provide the non-moving party with a notice setting forth the factual  
24 basis for the alleged violation of Section 3 (“Notice of Violation”). The Parties shall then meet  
25 and confer regarding the basis for the anticipated motion or application in an attempt to resolve it  
26 informally. Should such attempts at informal resolution fail, the moving-party may file its  
27 enforcement motion or application. The prevailing party on any motion to enforce this Consent  
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1 Judgment shall be entitled to its fees and costs associated with the motion.

2 **5. PAYMENTS**

3 5.1 **Payments by Settling Defendant.** On or before December 1, 2022, Settling Defendant  
4 shall pay the total sum of \$37,500 as a settlement payment as further set forth in this Section.

5 5.2 **Allocation of Payments.** The total settlement amount shall be paid by three separate  
6 checks delivered as set forth below (and summarized in Section 5.2.3). Any failure by Settling  
7 Defendant to comply with the payment terms herein shall be subject to a stipulated late fee to be  
8 paid by Settling Defendant in the amount of \$100 for each day the full payment is not received  
9 after the applicable payment due date set forth in Section 5.1. The late fees required under this  
10 Section shall be recoverable, together with reasonable attorneys' fees, in an enforcement  
11 proceeding brought pursuant to Section 4 of this Consent Judgment. The funds paid by Settling  
12 Defendant shall be allocated as set forth below between the following categories and made  
13 payable as follows:

14 5.2.1 \$12,500 as a civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil  
15 penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12 (25%  
16 to EDP and 75% to the State of California's Office of Environmental Health Hazard Assessment  
17 ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment for \$9,375 shall be  
18 made payable to OEHHA and associated with taxpayer identification number 68-0284486. This  
19 payment shall be delivered as follows:

20 For United States Postal Service Delivery:

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

26 For Non-United States Postal Service Delivery:

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

1 The EDP portion of the civil penalty payment for \$3,125 shall be made  
2 payable to Environmental Democracy Project and associated with taxpayer identification number  
3 84-3998900. This payment shall be delivered to Williams Environmental Law, 356 49<sup>th</sup> Street,  
4 Oakland, CA 94609.

5 5.2.2 \$25,000 as a reimbursement of a portion of EDP's reasonable attorneys' fees and costs.  
6 The attorneys' fees and cost reimbursement shall be made payable to Williams Environmental  
7 Law and associated with taxpayer identification number 84-4252225. This check shall be  
8 delivered to Williams Environmental Law at 356 49th Street, Oakland, CA 94609.

9 5.2.3 To summarize, Settling Defendant shall deliver checks made out to the payees and in the  
10 amounts set forth below:

11 Payee	12 Type	13 Amount	14 Deliver To
15 OEHHA	16 Penalty	\$9,375	OEHHA per Section 5.2.1
Williams Environmental Law (WEL)	Fees/Costs	\$25,000	WEL per Section 5.2.1
Environmental Democracy Project	Penalty	\$3,125	WEL per Section 5.2.2

17 **6. MODIFICATION AND DISPUTE RESOLUTION**

18 6.1 **Modification.** This Consent Judgment may be modified from time to time by express  
19 written agreement of the Parties, with the approval of the Court, or by an order of this Court upon  
20 motion and in accordance with law.

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

24 **7. CLAIMS COVERED AND RELEASE**

25 7.1 Provided that Settling Defendant complies in full with its obligations under Section 5  
26 hereof, this Consent Judgment is a full, final, and binding resolution between EDP on behalf of  
27 itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities  
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1 that are under common ownership, directors, officers, employees, agents, shareholders,  
2 successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which Settling  
3 Defendant directly or indirectly distribute or sell Covered Products, and its affiliates and  
4 subsidiaries, and any and all distributors, wholesalers, customers, retailers, franchisees, licensors,  
5 and licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on  
6 failure to warn about alleged exposure to lead contained in Covered that were sold, distributed or  
7 offered for sale by Settling Defendant prior to the Effective Date.

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

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

## 22 **8. PROVISION OF NOTICE**

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

25 Lucas Williams  
26 Williams Environmental Law  
27 356 49<sup>th</sup> Street  
28 Oakland, CA 94609  
lucas@williams-envirolaw.com

1 8.2 When Settling Defendant is entitled to receive any notice under this Consent Judgment,  
2 the notice shall be sent by first class and electronic mail to:

3 Ronen M. Emrani  
4 Snackerz, Inc.  
5 5628 Bandini Blvd.  
6 Bell, CA 90201  
7 ron@snackerz.com

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

## 10 **9. COURT APPROVAL**

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

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

## 21 **11. ATTORNEYS' FEES**

22 11.1 A Party who unsuccessfully brings or contests an action, motion, or application arising  
23 out of this Consent Judgment shall be required to pay the prevailing Party's reasonable attorneys'  
24 fees and costs.

25 11.2 Nothing in this Section 11 shall preclude a Party from seeking an award of sanctions  
26 pursuant to law.

## 27 **12. ENTIRE AGREEMENT**

28 12.1 This Consent Judgment contains the sole and entire agreement and understanding of the  
Parties with respect to the entire subject matter hereof, and any and all prior discussions,

1 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
2 and therein. There are no warranties, representations, or other agreements between the Parties  
3 except as expressly set forth herein. No representations, oral or otherwise, express or implied,  
4 other than those specifically referred to in this Consent Judgment have been made by any Party  
5 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,  
6 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically  
7 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the  
8 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,  
9 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
10 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
11 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
12 whether or not similar, nor shall such waiver constitute a continuing waiver.

13 **13. RETENTION OF JURISDICTION**

14 13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent  
15 Judgment.

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

17 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the  
18 Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the  
19 Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

21 15.1 Nothing in this Consent Judgment shall preclude EDP from resolving any claim against  
22 an entity that is not Settling Defendant on terms that are different from those contained in this  
23 Consent Judgment.

24 **16. EXECUTION IN COUNTERPARTS**

25 16.1 The stipulations to this Consent Judgment may be executed electronically and in  
26 counterparts by means of portable document format (pdf), which taken together shall be deemed  
27 to constitute one document.

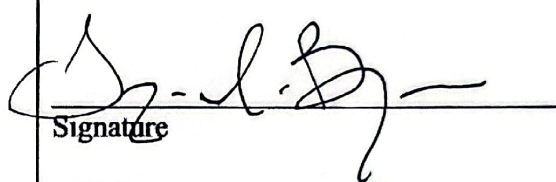


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**IT IS SO ORDERED, ADJUDGED,  
AND DECREED.**

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

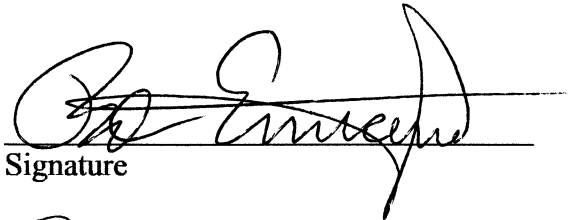
**IT IS SO STIPULATED:**

Dated: <u>July 11</u> , 2022	<b>ENVIRONMENTAL DEMOCRACY PROJECT</b>   _____ Signature  <u>Tanya M. Boyce</u> _____ Printed Name  <u>Executive Director</u> _____ Title
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Dated: July 5, 2022

**SNACKERZ, INC.**

  
Signature

Ronen Emrani  
Printed Name

Pres  
Title