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ENVIRONMENTAL DEMOCRACY PROJECT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

ENVIRONMENTAL DEMOCRACY) Case No. RG21112735
PROJECT, a non-profit corporation,)
) Assigned for All Purposes to:
Plaintiff,) Judge Tara Desautels, Dept. 16
)
v.) **[PROPOSED] CONSENT JUDGMENT**
) **RE: EL SUPER LEON PONCHIN**
EL SUPER LEON PONCHIN SNACKS, INC.,) **SNACKS, INC.**
)
Defendants.)
)
)

1 **1. INTRODUCTION**

2 1.1 The Parties to this Consent Judgment are Plaintiff Environmental Democracy
3 Project, a California non-profit corporation (“EDP”) and Defendant El Super Leon Ponchin
4 Snacks, Inc. (“Settling Defendant”). EDP and Settling Defendant (the “Parties”) enter into this
5 Consent Judgment to settle certain claims asserted by EDP against Settling Defendant as set forth
6 in the operative complaint (“Complaint”) in this action.

7 1.2 On or about June 15, 2021, EDP provided a 60-day Notice of Violation of
8 Proposition 65 to the California Attorney General, the District Attorneys of every county in
9 California, the City Attorneys of every California city with a population greater than 750,000,
10 and to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing
11 persons to lead contained in saladitos (dried and salted plums) without first providing a clear and
12 reasonable Proposition 65 warning.

13 1.3 Settling Defendant is a corporation or other business entity that manufactures,
14 distributes, sells, or offers for sale saladitos that are sold in the State of California or has done so
15 in the past.

16 1.4 On September 10, 2021, EDP filed the original Complaint in the above-captioned
17 matter naming Settling Defendant as defendant.

18 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
19 has jurisdiction over the allegations of violations contained in the Complaint and personal
20 jurisdiction over Settling Defendant 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 with respect to Covered Products manufactured,
24 distributed, and/or sold by Settling Defendant.

25 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the
26 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with
27 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
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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
9 covered with salt or chili.

10 2.3 “Effective Date” means the date on which notice of entry of this Consent
11 Judgment by the 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
14 shall 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
16 already, Settling Defendant shall use its best efforts to recall all Covered Products from the
17 California and national marketplace including but not limited to recalling the products from
18 Settling Defendant’s wholesale customers.

19 **4. ENFORCEMENT**

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

2 **5. PAYMENTS**

3 5.1 **Payments by Settling Defendant.** Within seven calendar days of the Effective
4 Date, Settling Defendant shall pay the total sum of \$40,000 as a settlement payment as further set
5 forth in this Section.

6 5.2 **Allocation of Payments.** The total settlement amount shall be paid by three
7 separate checks delivered as set forth below (and summarized in Section 5.2.4). Any failure by
8 Settling Defendant to comply with the payment terms herein shall be subject to a stipulated late
9 fee to be paid by Settling Defendant in the amount of \$100 for each day the full payment is not
10 received after the applicable payment due date set forth in Section 5.1. The late fees required
11 under this Section shall be recoverable, together with reasonable attorneys' fees, in an
12 enforcement proceeding brought pursuant to Section 4 of this Consent Judgment. The funds paid
13 by Settling Defendant shall be allocated as set forth below between the following categories and
14 made payable as follows:

15 5.2.1 \$10,000 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).
16 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §
17 25249.12 (25% to EDP and 75% to the State of California's Office of Environmental Health
18 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
19 payment for \$7,500 shall be made payable to OEHHA and associated with taxpayer identification
20 number 68-0284486. This payment shall be delivered as follows:

21 For United States Postal Service Delivery:

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

27 For Non-United States Postal Service Delivery:

28 Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment

1001 I Street, MS #19B
Sacramento, CA 95814

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2 The EDP portion of the civil penalty payment for \$2,500 shall be made
3 payable to Environmental Democracy Project and associated with taxpayer identification number
4 84-3998900. This payment shall be delivered to Williams Environmental Law, 356 49th street,
5 Oakland, CA 94609.

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

10 5.2.3 \$5,000 as an Additional Settlement Payment ("ASP") to EDP pursuant to
11 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. EDP
12 shall use these funds to support EDP programs and activities that seek to educate the public about
13 toxic chemicals including lead, and to advocate on behalf of impacted communities for
14 businesses practices that are equitable, and safe for human health and the environment. EDP
15 shall obtain and maintain adequate records to document that this ASP is spent on these activities
16 and EDP agrees to provide such documentation to the Attorney General within thirty (30) days of
17 any request from the Attorney General. This payment shall be made payable to Environmental
18 Democracy Project and associated with employer identification number 84-3998900 and shall be
19 delivered to Williams Environmental Law at 356 49th Street, Oakland, CA 94609.

20 5.2.4 To summarize, Settling Defendant shall deliver checks made out to the
21 payees and in the amounts set forth below:

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Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$7,500	OEHHA per Section 5.2.1
Williams Environmental Law (WEL)	Fees/Costs	\$25,000	WEL per Section 5.2.1
Environmental Democracy Project	Penalty and ASP	\$7,500	WEL per Section 5.2.2

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1 **6. MODIFICATION AND DISPUTE RESOLUTION**

2 6.1 **Modification.** This Consent Judgment may be modified from time to time by
3 express written agreement of the Parties, with the approval of the Court, or by an order of this
4 Court upon motion and in accordance with law.

5 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
6 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
7 modify the Consent Judgment.

8 **7. CLAIMS COVERED AND RELEASE**

9 7.1 Provided that Settling Defendant complies in full with its obligations under
10 Section 5 hereof, this Consent Judgment is a full, final, and binding resolution between EDP on
11 behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries,
12 affiliated entities that are under common ownership, directors, officers, employees, agents,
13 shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to
14 which Settling Defendant directly or indirectly distribute or sell Covered Products, and their
15 affiliates and subsidiaries, and any and all distributors, wholesalers, customers, retailers,
16 franchisees, licensors, and licensees (“Downstream Defendant Releasees”), of any violation of
17 Proposition 65 based on failure to warn about alleged exposure to lead contained in Covered
18 Products that were sold, distributed, or offered for sale by Settling Defendant prior to the
19 Effective Date.

20 7.2 Provided that Settling Defendant complies in full with its obligations under
21 Section 5 hereof, EDP, for itself, its agents, successors and assigns, releases, waives, and forever
22 discharges any and all claims against Settling Defendant, Defendant Releasees, Cardenas Markets
23 LLC, and its affiliates and subsidiaries, and Downstream Defendant Releasees arising from any
24 violation of Proposition 65 or any other statutory or common law claims that have been or could
25 have been asserted by EDP individually or in the public interest regarding the failure to warn
26 about exposure to lead arising in connection with Covered Products manufactured, distributed or
27 sold by Settling Defendant prior to the Effective Date.

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1 7.3 Provided that Settling Defendant complies in full with its obligations under
2 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant
3 shall constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and
4 Downstream Defendant Releasees with respect to any alleged failure to warn about lead in
5 Covered Products manufactured, distributed, or sold by Settling Defendant after the Effective
6 Date.

7 **8. PROVISION OF NOTICE**

8 8.1 When EDP is entitled to receive any notice under this Consent Judgment, the
9 notice shall be sent by first class and electronic mail to:

10 Lucas Williams
11 Williams Environmental Law
12 356 49th Street
13 Oakland, CA 94609
14 lucas@williams-envirolaw.com

15 8.2 When Settling Defendant is entitled to receive any notice under this Consent
16 Judgment, the notice shall be sent by first class and electronic mail to:

17 Veronica M. Aguilar
18 Law Offices of Veronica M. Aguilar
19 16870 W. Bernardo Drive, Suite 400
20 San Diego, CA 92127
21 veronica@vaguilarlaw.com

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

24 **9. COURT APPROVAL**

25 9.1 This Consent Judgment shall become effective upon the date signed by EDP and
26 Settling Defendant, whichever is later, provided however, that EDP shall prepare and file a
27 Motion for Approval of this Consent Judgment and Settling Defendant shall support entry of this
28 Consent Judgment by the Court.

 9.2 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

1 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

2 **10. GOVERNING LAW AND CONSTRUCTION**

3 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
4 California.

5 **11. ATTORNEYS' FEES**

6 11.1 A Party who unsuccessfully brings or contests an action, motion, or application
7 arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable
8 attorneys' fees and costs.

9 11.2 Nothing in this Section 11 shall preclude a Party from seeking an award of
10 sanctions pursuant to law.

11 **12. ENTIRE AGREEMENT**

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

26 **13. RETENTION OF JURISDICTION**

27 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
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1 Consent Judgment.

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

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

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

7 15.1 Nothing in this Consent Judgment shall preclude EDP from resolving any claim
8 against an entity that is not Settling Defendant on terms that are different from those contained in
9 this Consent Judgment.

10 **16. EXECUTION IN COUNTERPARTS**

11 16.1 The stipulations to this Consent Judgment may be executed electronically and in
12 counterparts by means of portable document format (pdf), which taken together shall be deemed
13 to constitute one document.

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

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18 Dated: _____

Judge of the Superior Court

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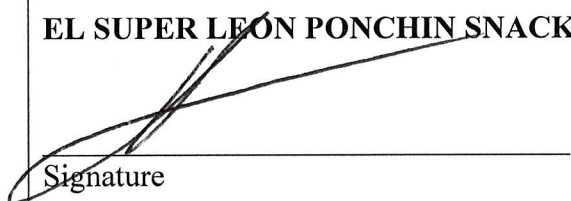
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IT IS SO STIPULATED:

<p>Dated: <u>June 21</u>, 2022</p>	<p>ENVIRONMENTAL DEMOCRACY PROJECT</p> <p><u>[Signature]</u> Signature</p> <p><u>Tanya M. Boyce</u> Printed Name</p> <p><u>Executive Director</u> Title</p>
<p>Dated: _____, 2022</p>	<p>EL SUPER LEON PONCHIN SNACKS, INC.</p> <p>_____ Signature</p> <p>_____ Printed Name</p> <p>_____ Title</p>

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IT IS SO STIPULATED:

Dated: _____, 2022	ENVIRONMENTAL DEMOCRACY PROJECT _____ Signature _____ Printed Name _____ Title
Dated: <u>June 20th</u> , 2022	EL SUPER LEON PONCHIN SNACKS, INC.  _____ Signature <u>Ildelfonso Guerrero</u> Printed Name <u>President</u> Title