

ENDORSED  
FILED  
ALAMEDA COUNTY

NOV 14 2018

CLERK OF THE SUPERIOR COURT  
By PAM WILLIAMS  
Deputy

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

CENTER FOR ENVIRONMENTAL HEALTH, )

Plaintiff, )

v. )

GOYA FOODS, INC., *et al.*, )

Defendants. )

Case No. RG 17-870238

~~PROPOSED~~ CONSENT JUDGMENT  
AS TO OLD LYME GOURMET  
COMPANY

**1. DEFINITIONS**

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

1.2 "Compliance Date" shall mean June 1, 2019.

1.3 "Covered Products" means fried or baked potato or sweet potato based snack food products, including sliced Potato Chips (as defined below) and snack food products containing potato or sweet potato flour (such as extruded vegetable chips, vegetable sticks, and vegetable

1 straws). An initial list of the Covered Products divided by Potato Chips and Extruded Products is  
2 attached as Exhibit A hereto.

3 1.4 “Potato Chips” means sliced potato chips. It is the Parties’ intent that the Potato  
4 Chips referenced in this Consent Judgment are the kind of products falling within in the “potato  
5 chip products” category in the Consent Judgment as to Defendant Frito-Lay, Inc., entered August  
6 1, 2008, in *People v. Frito-Lay, Inc., et al.*, Los Angeles County Superior Court Case No. BC  
7 338956.<sup>1</sup>

8 1.5 “Extruded Products” means all Covered Products other than Potato Chips. It is the  
9 Parties’ intent that the Extruded Products referenced in this Consent Judgment are the kind of  
10 products falling within Type 4 in the “extruded, pellet, and baked products” category in the  
11 Consent Judgment as to Defendant Snak King Corporation, entered August 31, 2011, in *People v.*  
12 *Snyder’s of Hanover, et al.*, Alameda County Superior Court Case No. RG 09-455286.<sup>2</sup>

13 1.6 “Effective Date” means the date on which notice of entry of this Consent  
14 Judgment by the Court is served upon Settling Defendant.

## 15 2. INTRODUCTION

16 2.1 The Parties to this Consent Judgment are the Center for Environmental Health, a  
17 California non-profit corporation (“CEH”), and Old Lyme Gourmet Company (“Settling  
18 Defendant”). CEH and Settling Defendant (the “Parties”) enter into this Consent Judgment to  
19 settle certain claims asserted by CEH against Settling Defendant as set forth in the Complaint in  
20 the above-captioned matter.

21 2.2 On or about January 12, 2017, CEH provided a 60-day Notice of Violation of  
22 Proposition 65 to the California Attorney General, to the District Attorneys of every county in  
23 California, to the City Attorneys of every California city with a population greater than 750,000,  
24 and to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing  
25

---

26 <sup>1</sup> Examples of these products are found in Exhibit A to the Frito-Lay Consent Judgment.

27 <sup>2</sup> These products are referred to as “Group C, Type 4” products in Exhibit A to the Snak King Consent Judgment,  
which is available on the Attorney General’s website at <https://oag.ca.gov/prop65/litigation>.

1 persons to acrylamide contained in Covered Products without first providing a clear and  
2 reasonable Proposition 65 warning.

3           2.3     Settling Defendant is a corporation or other business entity that manufactures,  
4 distributes, sells, or offers for sale Covered Products that are sold in the State of California or has  
5 done so in the past.

6           2.4     On August 3, 2017, CEH filed the original complaint in the above-captioned  
7 matter, naming Settling Defendant as an original defendant. On August 17, 2017, CEH filed the  
8 Complaint.

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

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

24           **3.     INJUNCTIVE RELIEF**

25           3.1     **Reformulation of Covered Products.** Upon the Compliance Date, Settling  
26 Defendant shall not purchase, manufacture, ship, sell, or offer for sale Covered Products that will  
27 be sold or offered for sale in California that exceed the following acrylamide concentration levels  
28

1 (the “Reformulation Levels”), such concentration to be determined by use of a test performed by  
2 an accredited laboratory using either GC/MS (Gas Chromatograph/Mass Spectrometry), LC-  
3 MS/MS (Liquid Chromatograph-Mass Spectrometry), or any other testing method agreed upon  
4 by the Parties:

5 3.1.1 For Sliced Potato Chips:

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

11 3.1.1.2 The acrylamide concentration of any individual unit of Sliced  
12 Potato Chips shall not exceed 350 ppb by weight, based on a representative composite sample  
13 taken from the individual unit being tested (the “Potato Chips Unit Level”).

14 3.1.2 For Extruded Products:

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

20 3.1.2.2 The acrylamide concentration of any individual unit of Extruded  
21 Products shall not exceed 490 ppb by weight, based on a representative composite sample taken  
22 from the individual unit being tested (the “Extruded Products Unit Level”).

23 3.2 **Clear and Reasonable Warnings.** A Covered Product purchased, manufactured,  
24 shipped, sold or offered for sale by Settling Defendant may, as an alternative to meeting the  
25 Reformulation Levels set forth in Section 3.1, be sold or offered for sale in California as of the  
26 Compliance Date with a Clear and Reasonable Warning that complies with the provisions of this  
27 Section 3.2. A Clear and Reasonable Warning may only be provided for Covered Products that

1 Settling Defendant reasonably believes do not meet the Reformulation Levels. A Clear and  
2 Reasonable Warning under this Agreement shall state:

3 **WARNING:** Consuming this product can expose you to acrylamide, which is known to  
4 the State of California to cause cancer. For more information go to  
5 [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

6 The word “**WARNING**” shall be displayed in all capital letters and bold print. This warning  
7 statement shall be prominently displayed on the Covered Product, on the packaging of the  
8 Covered Product, or on a placard or sign provided that the statement is displayed with such  
9 conspicuousness, as compared with other words, statements or designs as to render it likely to be  
10 read and understood by an ordinary individual prior to sale. If the warning statement is displayed  
11 on the Covered Product’s label, it must be set off from other surrounding information and  
12 enclosed in a text box. If the warning statement is displayed on a placard or sign where the  
13 Covered Product is offered for sale, the warning placard or sign must enable an ordinary  
14 individual to easily determine which specific Covered Products the warning applies to, and to  
15 differentiate between that Covered Product and other products to which the warning statement  
16 does not apply. For internet, catalog or any other sale where the consumer is not physically  
17 present, the warning statement shall be displayed in such a manner that it is likely to be read and  
18 understood by an ordinary individual prior to the authorization of or actual payment.

19 **4. ENFORCEMENT**

20 4.1 **General Enforcement Provisions.** CEH 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. Any action to enforce alleged violations of Section 3 by Settling Defendant shall be  
23 brought exclusively pursuant to this Section 4, and be subject to the meet and confer requirement  
24 of Section 4.2.4 if applicable.

25 4.2 **Enforcement of Reformulation Commitment.**

26 4.2.1 Notice of Violation. In the event that CEH purchases a Covered Product  
27 in California that was manufactured, distributed or sold by Settling Defendant with a best-by or

28

1 sell-by (or equivalent) date or other code that reflects that the Covered Product was manufactured  
2 on or after the Compliance Date, for which CEH has laboratory test results showing that the  
3 Covered Product has an acrylamide level exceeding the Unit Level, and which lacks a Clear and  
4 Reasonable Warning that complies with Section 3.2, CEH may issue a Notice of Violation  
5 pursuant to this Section. Provided, however, CEH may not issue any Notice of Violation if the  
6 packaging of the Covered Product is marked or labeled with the statement “Not for Sale in  
7 California” or substantially similar language as long as such statement is prominently placed  
8 upon such Covered Product’s label or other labeling as compared with other words or statements  
9 on the label or labeling as to render it likely to be read and understood by an ordinary individual  
10 under customer conditions of purchase or use. If Settling Defendants mark or label a Covered  
11 Product with such a statement, Settling Defendants shall include a letter to their retailer or  
12 distributor customer notifying the customer that the Covered Product may not be sold in  
13 California.

14 4.2.2 Service of Notice of Violation and Supporting Documentation.

15 4.2.2.1 Subject to Section 4.2.1, the Notice of Violation shall be sent to the  
16 person(s) identified in Section 8.2 to receive notices for Settling Defendant, and must be served  
17 within sixty (60) days of the later of the date the Covered Product at issue was purchased or  
18 otherwise acquired by CEH or the date that CEH can reasonably determine that the Covered  
19 Product at issue was manufactured, shipped, sold, or offered for sale by Settling Defendant,  
20 provided, however, that CEH may have up to an additional sixty (60) days to send the Notice of  
21 Violation if, notwithstanding CEH’s good faith efforts, the test data required by Section 4.2.2.2  
22 below cannot be obtained by CEH from its laboratory before expiration of the initial sixty (60)  
23 day period.

24 4.2.2.2 The Notice of Violation shall, at a minimum, set forth: (a) the date  
25 the Covered Product was purchased; (b) the location at which the Covered Product was  
26 purchased; (c) a description of the Covered Product giving rise to the alleged violation, including  
27 the name and address of the retail entity from which the sample was obtained and pictures of the  
28

1 product packaging from all sides, which identifies the product lot; and (d) all test data obtained  
2 by CEH regarding the Covered Product and supporting documentation sufficient for validation of  
3 the test results, including any laboratory reports, quality assurance reports, and quality control  
4 reports associated with testing of the Covered Product.

5 4.2.3 Notice of Election of Response. No more than thirty (30) days after  
6 effectuation of service of a Notice of Violation, Settling Defendant shall provide written notice to  
7 CEH whether it elects to contest the allegations contained in a Notice of Violation (“Notice of  
8 Election”). Failure to provide a Notice of Election within thirty (30) days of effectuation of  
9 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.  
10 Upon notice to CEH, Settling Defendant may have up to an additional sixty (60) days to elect if,  
11 notwithstanding Settling Defendant’s good faith efforts, Settling Defendant is unable to verify the  
12 test data provided by CEH before expiration of the initial thirty (30) day period.

13 4.2.3.1 If a Notice of Violation is contested, the Notice of Election shall  
14 include all documents upon which Settling Defendant is relying to contest the alleged violation,  
15 including all available test data. If Settling Defendant or CEH later acquires additional test or  
16 other data regarding the alleged violation during the meet and confer period described in Section  
17 4.2.4, it shall notify the other Party and promptly provide all such data or information to the Party  
18 unless either the Notice of Violation or Notice of Election has been withdrawn.

19 4.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and Settling  
20 Defendant shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of  
21 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw  
22 the original Notice of Election contesting the violation and serve a new Notice of Election to not  
23 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay  
24 \$2,500 in addition to any payment required under this Consent Judgment. At any time, CEH may  
25 withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the result shall be  
26 as if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of  
27 Violation results within thirty (30) days of a Notice of Election to contest, CEH may file an  
28

1 enforcement motion or application pursuant to Section 4.1. In any such proceeding, CEH may  
2 seek whatever fines, costs, penalties, attorneys' fees, or other remedies are provided by law for an  
3 alleged failure to comply with the Consent Judgment.

4 4.2.5 Non-Contested Notices. If Settling Defendant elects to not contest the  
5 allegations in a Notice of Violation, it shall undertake corrective action(s) and make payments, if  
6 any, as set forth below.

7 4.2.5.1 Settling Defendant shall include in its Notice of Election a detailed  
8 description with supporting documentation of the corrective action(s) that it has undertaken or  
9 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,  
10 provide reasonable assurance that all Covered Products having the same lot number as that of the  
11 Covered Product identified in CEH's Notice of Violation (the "Noticed Covered Products") will  
12 not be thereafter sold in California or offered for sale to California customers by Settling  
13 Defendant and that Settling Defendant has sent instructions to any retailers or customers that offer  
14 the Noticed Covered Products for sale to cease offering the Noticed Covered Products for sale to  
15 California consumers and to return all such Noticed Covered Products to Settling Defendant.  
16 Settling Defendant shall keep for a period of one year and make available to CEH upon  
17 reasonable notice (which shall not exceed more than one request per year) for inspection and  
18 copying records of any correspondence regarding the foregoing. If there is a dispute over the  
19 corrective action, Settling Defendant and CEH shall meet and confer before seeking any remedy  
20 in court. In no case shall CEH issue more than one Notice of Violation per manufacturing lot of a  
21 type of Covered Product, nor shall CEH issue more than two Notices of Violation in the first year  
22 following the Compliance Date.

23 4.2.5.2 If the Notice of Violation is the first, second, third, or fourth Notice  
24 of Violation received by Settling Defendant under Section 4.2.1 that was not successfully  
25 contested or withdrawn, then Settling Defendant shall pay \$15,000 for each Notice of Violation.  
26 If Settling Defendant has received more than four (4) Notices of Violation under Section 4.2.1  
27 that were not successfully contested or withdrawn, then Settling Defendant shall pay \$25,000 for  
28



1 each Notice of Violation. If Settling Defendant produces with its Notice of Election test data for  
2 the Covered Product that: (i) was conducted prior to the date CEH gave Notice of Violation;  
3 (ii) was conducted on the same or same type of Covered Product; and (iii) demonstrates  
4 acrylamide levels below the applicable Unit Level, then any payment under this Section shall be  
5 reduced by 100 percent (100%) for the first Notice of Violation, by seventy-five percent (75%)  
6 for the second Notice of Violation, and by fifty percent (50%) for any subsequent Notice of  
7 Violation. In no case shall Settling Defendant be obligated to pay more than \$100,000 for  
8 uncontested Notices of Violation in any calendar year irrespective of the total number of Notices  
9 of Violation issued.

10           4.2.6    Payments. Any payments under Section 4.2 shall be made by check  
11 payable to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a  
12 Notice of Election triggering a payment and shall be used as reimbursement for costs for  
13 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse  
14 attorneys’ fees and costs incurred in connection with these activities.

15           4.3     **Repeat Violations.** If Settling Defendant has received four (4) or more Notices of  
16 Violation concerning the same type of Covered Product that were not successfully contested or  
17 withdrawn in any two (2) year period then, at CEH’s option, CEH may seek whatever fines,  
18 costs, penalties, attorneys’ fees, or other remedies that are provided by law for failure to comply  
19 with the Consent Judgment. Prior to seeking such relief, CEH shall meet and confer with Settling  
20 Defendant for at least thirty (30) days to determine if Settling Defendant and CEH can agree on  
21 measures that Settling Defendant can undertake to prevent future alleged violations.

22     **5.     PAYMENTS**

23           5.1     **Payments by Settling Defendant.** Within ten (10) calendar days of the Effective  
24 Date, Settling Defendant shall pay the total sum of \$290,000 as a settlement payment as further  
25 set forth in this Section.

26           5.2     **Allocation of Payments.** The total settlement amount for Settling Defendant shall  
27 be paid in five (5) separate checks in the amounts specified below and delivered as set forth

1 below. Any failure by Settling Defendant to comply with the payment terms herein shall be  
2 subject to a stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each  
3 day the full payment is not received after the payment due date set forth in Section 5.1. The late  
4 fees required under this Section shall be recoverable, together with reasonable attorneys' fees, in  
5 an enforcement proceeding brought pursuant to Section 4 of this Consent Judgment. The funds  
6 paid by Settling Defendant shall be allocated as set forth below between the following categories  
7 and made payable as follows:

8 5.2.1 \$51,020 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).

9 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §  
10 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health  
11 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty  
12 payment for \$38,265 shall be made payable to OEHHA and associated with taxpayer  
13 identification number 68-0284486. This payment shall be delivered as follows:

14 For United States Postal Service Delivery:

15 Attn: Mike Gyurics  
16 Fiscal Operations Branch Chief  
17 Office of Environmental Health Hazard Assessment  
18 P.O. Box 4010, MS #19B  
19 Sacramento, CA 95812-4010

20 For Non-United States Postal Service Delivery:

21 Attn: Mike Gyurics  
22 Fiscal Operations Branch Chief  
23 Office of Environmental Health Hazard Assessment  
24 1001 I Street, MS #19B  
25 Sacramento, CA 95814

26 The CEH portion of the civil penalty payment for \$12,755 shall be made  
27 payable to the Center for Environmental Health and associated with taxpayer identification  
28 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero  
Street, San Francisco, CA 94117.

5.2.2 \$38,260 as an Additional Settlement Payment ("ASP") to CEH pursuant  
to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204.

1 CEH intends to restrict use of the ASPs received from this Consent Judgment to the following  
2 purposes: the funds will be placed in CEH's Toxics in Food Fund and used to support CEH  
3 programs and activities that seek to educate the public about acrylamide and other toxic  
4 chemicals in food, to work with the food industry and agriculture interests to reduce exposure to  
5 acrylamide and other toxic chemicals in food, and to thereby reduce the public health impacts and  
6 risks of exposure to acrylamide and other toxic chemicals in food sold in California. CEH shall  
7 obtain and maintain adequate records to document that ASPs are spent on these activities and  
8 CEH agrees to provide such documentation to the Attorney General within thirty (30) days of any  
9 request from the Attorney General. The payment pursuant to this Section shall be made payable  
10 to the Center for Environmental Health and associated with taxpayer identification number 94-  
11 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San  
12 Francisco, CA 94117.

13                   5.2.3     \$200,720 as a reimbursement of a portion of CEH's reasonable attorneys'  
14 fees and costs. The attorneys' fees and cost reimbursement shall be made payable to the  
15 Lexington Law Group and associated with taxpayer identification number 94-3317175. This  
16 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
17 94117.

## 18     **6.     MODIFICATION AND DISPUTE RESOLUTION**

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

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

26             6.3     **Change in Proposition 65.** If Proposition 65 or its implementing regulations  
27 (including but not limited to the "safe harbor no significant risk level" for acrylamide set forth at  
28

1 Cal. Code Regs., tit. 27, section 25705, subdivision (c)(2)) are changed from their terms as they  
2 exist on the date of entry of this Consent Judgment in a manner that impacts the Reformulation  
3 Levels, or if OEHHA takes some other final regulatory action for products similar to the Covered  
4 Products in a manner that impacts the Reformulation Levels or determines that warnings for  
5 acrylamide are not required for such products, then Settling Defendant may seek to modify this  
6 Consent Judgment to modify the Reformulation Levels. The Parties recognize that the  
7 Reformulation Levels are based on a compromise of a number of issues, and that a change to the  
8 “safe harbor no significant risk level” for acrylamide would not necessarily entitle a Party to a  
9 modification of the terms of this Consent Judgment corresponding to a linear relationship with  
10 such a change.

11 **7. CLAIMS COVERED AND RELEASE**

12 7.1 Provided that Settling Defendant complies in full with its obligations under  
13 Section 5 hereof, this Consent Judgment is a full, final, and binding resolution between CEH on  
14 behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries,  
15 affiliated entities that are under common ownership, directors, officers, employees, agents,  
16 shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to  
17 which Settling Defendant directly or indirectly distributes or sells Covered Products, including  
18 but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and  
19 licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on  
20 failure to warn about alleged exposure to acrylamide contained in Covered Products that were  
21 sold, distributed, or offered for sale by Settling Defendant prior to the Compliance Date.

22 7.2 Provided that Settling Defendant complies in full with its obligations under  
23 Section 5 hereof, CEH, for itself and its agents, successors, and assigns, releases, waives, and  
24 forever discharges any and all claims against Settling Defendant, Defendant Releasees, and  
25 Downstream Defendant Releasees arising from any violation of Proposition 65 or any other  
26 statutory or common law claims that have been or could have been asserted by CEH individually  
27 or in the public interest regarding the failure to warn about exposure to acrylamide arising in  
28

1 connection with Covered Products manufactured, distributed or sold by Settling Defendant prior  
2 to the Compliance Date.

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

9 **8. PROVISION OF NOTICE**

10 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
11 notice shall be sent by first class and electronic mail to:

12 Howard Hirsch  
13 Lexington Law Group  
14 503 Divisadero Street  
San Francisco, CA 94117  
hhirsch@lexlawgroup.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 Meredith A. Jones-McKeown  
18 Perkins Coie LLP  
19 505 Howard Street, Suite 1000  
San Francisco, CA 94105  
mjonesmckeown@perkinscoie.com

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

22 **9. COURT APPROVAL**

23 9.1 This Consent Judgment shall become effective upon the date signed by CEH and  
24 Settling Defendant, whichever is later, provided however, that CEH shall prepare and file a  
25 Motion for Approval of this Consent Judgment and Settling Defendant shall support entry of this  
26 Consent Judgment by the Court.

27 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or  
28

1 effect and shall not be introduced into evidence or otherwise used in any proceeding for any  
2 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

3 **10. GOVERNING LAW AND CONSTRUCTION**

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

6 **11. ATTORNEYS' FEES**

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

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

12 **12. ENTIRE AGREEMENT**

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

27  
28

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 authorized  
6 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
7 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

9 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
10 against any other entity on terms that are different than those contained in this Consent Judgment.  
11 Settling Defendant may move to modify this Consent Judgment pursuant to Section 6 to  
12 substitute higher Reformulation Levels that CEH agrees to in a future consent judgment  
13 applicable to Potato Chips or other products substantially similar to the Covered Products, and  
14 CEH agrees not to oppose any such motion except for good cause shown.

15 **16. EXECUTION IN COUNTERPARTS**

16 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
17 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
18 constitute one document.

19

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

22  
23 Dated: NOV 14 2018

IOANA PETROU  
Judge of the Superior Court

24

25


26

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

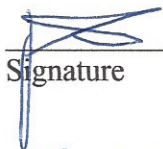
**IT IS SO STIPULATED:**

Dated: <u>3/19</u> , 2018	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>   _____ Signature  <u>CLAIRE PITALO</u> _____ Printed Name  <u>ASSOCIATE DIRECTOR</u> _____ Title
Dated: _____, 2018	<b>OLD LYME GOURMET COMPANY</b>  _____ Signature  _____ Printed Name  _____ Title



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IT IS SO STIPULATED:**

Dated: _____, 2018	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>  _____ Signature  _____ Printed Name  _____ Title
Dated: <u>8/31/</u> , 2018	<b>OLD LYME GOURMET COMPANY</b>   _____ Signature  <u>Jim Goldberg</u> _____ Printed Name  <u>CEO</u> _____ Title

**EXHIBIT A**

Potato Chips

- Aged Cheddar Horseradish Kettle Chips
- Baked Crisps Sea Salt
- Black Truffle Kettle Chips
- Bulk Original Salted Kettle Chips
- Classic Salted Flat Chips
- Cracked Pepper Kettle Chips
- Mesquite BBQ Kettle Chips
- New York Spicy Dill Pickle Kettle Chips
- Ninja Ginger Kettle Chips
- Original Salted Kettle Chips
- Reduced Fat Lightly Salted Kettle Chips
- Rosemary and Olive Oil Kettle Chips
- Salt and Vinegar Kettle Chips
- Sour Cream and Onion Kettle Chips
- Sweet Maui Onion Kettle Chips
- Zesty Jalapeno Kettle Chips

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28