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Superior Court of California
County of Alameda

04/14/2025

Clad Fluke, Executive Officer/Clerk of the Court

By: T. Smith Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10

11
12 PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 v.

15 PACIFIC AMERICAN FISH COMPANY, INC. ET
16 AL.,

17 Defendants.
18

Case No. RG20085046

ASSIGNED FOR ALL PURPOSES TO:
JUDGE SOMNATH CHATTERJEE
DEPARTMENT 21

[~~PROPOSED~~] CONSENT JUDGMENT –
CLEARWATER FINE FOODS (USA)
INC.

19 **1. INTRODUCTION**

20 1.1. This Consent Judgment is entered into between Plaintiff, the People of the State of
21 California, by and through Rob Bonta, Attorney General of the State of California (“People”), and
22 Defendant Clearwater Fine Foods (USA) Inc. (“Clearwater”), a company organized and existing
23 under the General Corporation Law of the State of Delaware. The People and Clearwater are
24 referred to collectively as the “Parties,” and individually as a “Party.”

25 1.2. The Parties agree to enter into this Consent Judgment without a trial. Nothing in this
26 Consent Judgment constitutes an admission by any party regarding any issue of law or fact that
27 could be raised and litigated at trial. This Consent Judgment sets forth the agreed-upon terms and
28 obligations of the Parties and, except as specifically provided below, constitutes the complete,

1 final and exclusive agreement between the Parties as to the subject matter of this lawsuit.

2 **2. BACKGROUND AND JURISDICTION**

3 2.1. Clearwater is headquartered in Nova Scotia, Canada, and has approximately 1,900
4 employees worldwide. Clearwater sells seafood products, and at present, sells various types of
5 clams to consumers in the State of California.

6 2.2. On February 22, 2021, the People filed a First Amended Complaint for Civil
7 Penalties and Injunctive Relief ("Complaint") in the Superior Court of the State of California,
8 County of Alameda, against five named defendants. The Complaint alleges that the defendants,
9 including Clearwater, violated provisions of the Safe Drinking Water and Toxic Enforcement Act
10 of 1986, Health and Safety Code sections 25249.5 et seq. ("Proposition 65"), and Business and
11 Professions Code sections 17200 et seq. ("Unfair Competition Law"), by knowingly and
12 intentionally exposing individuals to lead and/or cadmium in their fresh and/or frozen seafood
13 products without first providing a clear and reasonable warning to such individuals. Lead and/or
14 cadmium are substances known to the State of California to cause reproductive toxicity.

15 2.3. Clearwater is a business entity that (1) has employed ten or more persons at all times
16 relevant to the allegations of the Complaint; and (2) sells clam products in the State of California
17 and/or has done so in the past four years.

18 2.4. For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over the allegations of violations contained in the Complaint, and personal
20 jurisdiction over Clearwater as to the acts alleged in the Complaint. The Parties further stipulate
21 that (i) venue is appropriate in the County of Alameda, (ii) this Court has jurisdiction to enter this
22 Consent Judgment and to bind the Parties hereto, and (iii) this Court may enforce this Consent
23 Judgment against the Parties.

24 2.5. The Parties enter into this Consent Judgment to settle the allegations of the Complaint
25 with respect to Clearwater and to avoid potentially lengthy and/or costly litigation. Nothing in
26 this Consent Judgment shall be construed as an admission by the Parties of any fact, conclusion of
27 law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute
28 or be construed as an admission of any fact, conclusion of law, issue of law, or violation of law.

1 Except as provided herein, nothing in this Consent Judgment shall prejudice, waive, or impair any
2 right, remedy, argument or defense the Parties may have in this or any other or future legal
3 proceedings. This Section shall not diminish or otherwise affect the obligations, responsibilities,
4 and duties of the Parties under this Consent Judgment.

5 2.6. Clearwater agrees not to challenge or object to entry of this Consent Judgment by the
6 Court unless the People have notified it in writing that the People no longer support entry of the
7 Judgment or that the People seek to modify the Judgment. The Parties agree not to challenge this
8 Court's jurisdiction to enforce the terms of this Judgment once it has been entered, and this Court
9 will maintain jurisdiction over this Judgment for that purpose.

10 2.7. The Parties enter into this Consent Judgment as a full and final settlement of all
11 claims that the People have asserted in the Complaint with respect to Clearwater.

12 **3. DEFINITIONS**

13 3.1. The "Average Cadmium Concentration" for any production lot of Covered Product
14 shall be calculated by taking six representative samples from the production lot, compositing
15 those samples, and testing the resulting composite sample.

16 3.2. The "Running Average Cadmium Concentration" is equal to the average of (i) the
17 Average Cadmium Concentrations from the six previous production lots that Clearwater produced
18 and sampled most recently pursuant to Section 4.1.1, below, and (ii) the Average Cadmium
19 Concentration from the production lot in question.

20 3.3. "Compliance Documentation" shall include: (i) the certifications from the
21 Independent Food Quality Auditor or Internal Auditor pursuant to Sections 4.1.2, 4.2.1.1, 4.4.1.1,
22 4.5, 4.6 and 8.2(1) and Exhibit D of this Consent Judgment; (ii) a resume or summary of the
23 qualifications of the Independent Food Quality Auditor who has provided the Auditor's
24 Certification(s) required under this Consent Judgment that establishes that the Auditor has the
25 qualifications specified in Section 3.7 below; (iii) a statement showing the Internal Auditor has
26 complied with the requirements of Section 4.5 and 4.6; (iv) the results of the laboratory testing
27 required by Sections 4 and 8.2, below, and (v) any other submittals that Clearwater is required to
28 provide pursuant to this Consent Judgment.

1 3.4. “Covered Products” shall mean fresh and/or frozen Arctic Surf clam, Cockle clam,
2 and/or Northern Propeller clam products sold by Clearwater in California.

3 3.5. The “Effective Date” of this Consent Judgment shall be the date on which the
4 Consent Judgment is entered as a judgment by this Court.

5 3.6. “Harvest Area” shall mean an area, not to exceed 50 miles in radius, in which
6 Clearwater harvests clam products.

7 3.7. “Independent Food Quality Auditor” or “Independent Auditor” shall mean an
8 independent auditing company or person, foreign or domestic, that:

9 (i) has extensive knowledge of good manufacturing practices in the food processing
10 industry;

11 (ii) has sufficient experience in inspecting food processing facilities to ensure
12 compliance with good manufacturing practices, with the Hazard Analysis and Critical Control
13 Points (HACCP) food safety management system, and with the Food and Drug Administration
14 (FDA) Fish and Fishery Products Hazards and Controls Guidance, and is knowledgeable with
15 regard to (1) heavy metals as a potential hazard in food products, and (2) appropriate process
16 controls to minimize heavy metal contamination;

17 (iii) is (1) certified as an International HACCP Alliance Lead Instructor; (2) certified
18 as a Safe Quality Food (SQF) HACCP Lead Auditor or SQF Consultant; (3) holds a National
19 Environmental Health Association Certified Professional - Food Safety (CP-FS) Credential; (4) is
20 certified as a Food Scientist by the Institute of Food Technology; or (5) has equivalent
21 qualifications; and

22 (iv) has submitted a satisfactory resume of qualifications.

23 Upon request, the People may provide to Clearwater a list of Independent Food Quality
24 Auditors who have previously submitted their qualifications to the People, whose qualifications
25 are up to date, and who are deemed to meet the criteria set forth in this Section. Clearwater,
26 however, may select any Independent Food Quality Auditor that meets these criteria. Clearwater
27 shall provide to the People a summary of the qualifications of the Auditor it selects, which must
28 show that the requirements of this Section 3.7 have been satisfied. The tasks required of the

1 Independent Auditor pursuant to this Consent Judgment may later be performed by the Internal
2 Auditor, defined in Section 4.5, pursuant to the terms, conditions and requirements set forth in
3 that Section.

4 3.8. For analysis of the Covered Products, “Qualified Laboratory” shall mean a laboratory
5 that has demonstrated proficiency in conducting cadmium analysis on the Covered Products using
6 Inductively Coupled Plasma Mass Spectrometry (ICP-MS). A Qualified Laboratory must meet
7 the specifications set forth in California Code of Regulations, title 27, section 25900, subdivision
8 (b), and in Exhibit B.

9 3.9. “Laboratory Standards” shall mean the standards set forth in Exhibit B.

10 3.10. The “Maximum Cadmium Level” is 200 parts per billion (“ppb”) by weight. As set
11 forth in Sections 4.3 and 4.4, warnings are required for production lots of Covered Product that
12 contain concentrations of cadmium in excess of the Maximum Cadmium Level.

13 3.11. The “Cadmium Action Level” is 180 ppb. A production lot of a Covered Product
14 satisfies the Cadmium Action Level if (1) the Running Average Cadmium Concentration does not
15 exceed 180 ppb cadmium concentration by weight, and (2) the production lot in question does not
16 have an Average Cadmium Concentration of more than 200 ppb by weight.

17 3.12. “Representative Number of Production Lots” means the sum of: (1) six plus (2) the
18 square root, rounded to the nearest whole number, of the number of annual production lots of that
19 Covered Product obtained from each Harvest Area. For example, if Clearwater produces 100 lots
20 from a given Harvest Area in one year, then 16 of these lots would need to be sampled ($6 + \sqrt{100}$
21 $= 6 + 10 = 16$).

22 **4. INJUNCTIVE RELIEF**

23 4.1. Commencing ninety (90) calendar days after the Effective Date, Clearwater shall not
24 sell or cause to be sold any Covered Product in California, or to any buyers who will sell that
25 Covered Product in California, unless Clearwater has complied with the terms set forth below with
26 respect to that Covered Product. Except as provided in Section 4.7.1, if applicable, Clearwater
27 shall not be subject to enforcement in connection with a Covered Product sold or already in
28 distribution during this 90-day period.

1 4.1.1. Clearwater shall test a Representative Number of Production Lots each
2 calendar year, using a Qualified Laboratory that meets the Laboratory Standards. This testing will,
3 in all cases, include (i) the first six production lots of the Covered Product sold during the calendar
4 year plus, (ii) the square root, rounded to the nearest whole number, of the number of annual
5 production lots of that Covered Product obtained from each Harvest Area. For example, if
6 Clearwater produces 100 lots from a given Harvest Area in one year, then 16 of these lots would
7 need to be sampled ($6 + \sqrt{100} = 6 + 10 = 16$). Testing shall be conducted by compositing six
8 samples taken from each production lot that is tested, in compliance with Exhibit B. The Running
9 Average Cadmium Concentration shall be calculated based on the six lots that have been most
10 recently tested.

11 4.1.2. Within thirty (30) calendar days of the Effective Date, Clearwater will
12 retain an Independent Food Quality Auditor, who will provide written confirmation within ninety
13 (90) calendar days of the Effective Date, and annually thereafter, that the cadmium reduction
14 measures set forth in Exhibit C have been fully satisfied and that the testing of the product, in
15 compliance with Sections 3.8, 3.9, 4 and Exhibit B, shows that cadmium levels in Covered
16 Products sold, or intended to be sold, in California do not exceed the Maximum Cadmium Level,
17 and that the requirements of Section 4 have been implemented. This certification shall be in the
18 form set forth in Exhibit D.

19 4.2. If Clearwater's testing of the Covered Product reveals that the Running Average
20 Cadmium Concentration at any time exceeds the Cadmium Action Level (180 ppb), but is less
21 than the Maximum Cadmium Level (200 ppb), Clearwater shall do the following:

22 4.2.1. Clearwater may sell the most recently-tested production lot in California
23 without providing a Proposition 65 warning, but Clearwater shall:

24 4.2.1.1. Engage the Independent Food Quality Auditor to evaluate
25 the cause of this exceedance, who shall evaluate the cause of the exceedance and recommend to
26 Clearwater commercially-feasible measures to prevent the exceedance from re-occurring, and
27 provide to Clearwater and the People a written report summarizing the Independent Food Quality
28 Auditor's evaluation and recommendations. Clearwater shall promptly implement any such

measures and notify the People; and

4.2.1.2. Test the three consecutive lots produced after any production lot that had an Average Cadmium Concentration in excess of the Cadmium Action Level. This testing shall be in addition to the testing of the Representative Number of Production Lots specified by Section 3.12 and 4.1.1. If the Average Cadmium Concentration in any of these lots exceeds the Maximum Cadmium Level, Clearwater shall take the steps set forth in Section 4.3.

4.3. If Clearwater's testing of the Covered Product shows that the Average Cadmium Concentration for any production lot exceeds 200 ppb, Clearwater may sell that production lot in California only if it carries the warning specified in Section 4.4.2.

4.4. If Clearwater's testing of the Covered Product shows that the Running Average Cadmium Concentration exceeds 200 ppb, Clearwater may sell subsequently-produced production lots in California only if it takes the actions required by Section 4.4.1 or it provides the warning set forth in Section 4.4.2.

4.4.1. Clearwater may sell products from such production lots without the warning required by Section 4.4.2 only under the following circumstances:

4.4.1.1. It has engaged the Independent Auditor, who shall take the steps set forth in Section 4.2.1.1 with regard to the exceedance, and

(1) It has taken samples from any production lot that it wishes to sell without a warning, and the Average Cadmium Concentration in that production lot does not exceed 200 ppb, or

(2) The Running Average Cadmium Concentration falls below 180 ppb, in which case Clearwater may sell subsequently produced Covered Products pursuant to all the applicable requirements of this Consent Judgment.

4.4.2. Clearwater shall provide a required Proposition 65 warning for Covered Products it sells in California, as follows:

4.4.2.1. The warning shall state:

CALIFORNIA WARNING: Consuming this product can expose you

1 to chemicals including cadmium, which is known to the State of California to cause birth
2 defects or other reproductive harm. Pregnant women should limit exposure to cadmium
3 because it can harm the developing baby. Clearwater does not add cadmium to its
4 products; cadmium is found at varying levels in the marine environment and can
5 concentrate in clams and other shellfish. For more information, go to
6 www.P65warnings.ca.gov/food.

7 Warning labels that have been printed, or that are in the process of being printed, prior to the
8 Effective Date may use the word “may” instead of “can” in the first sentence of the warning, and
9 are not required to include the term “/food” in the warning.

10 4.4.2.2. The warning shall include a symbol consisting of a black
11 exclamation point in a yellow equilateral triangle with a black outline. The symbol shall be
12 placed to the left of the text of the warning, in a size no smaller than the height of the word
13 “WARNING.”

14 4.4.2.3. The warning shall be printed on the label of each package of the
15 Covered Product sold by Clearwater meeting the criteria set forth in Section 4.3 above. The
16 warning shall be prominently displayed on the label of the Covered Product with such
17 conspicuousness as compared with other words, statements, designs, or devices on the label as to
18 render the warning likely to be seen, read, and understood by an ordinary individual under
19 customary conditions of purchase or use.

20 4.4.2.4. Where a label used to provide a warning includes consumer
21 information about a product in a language other than English, the warning must also be provided
22 in that language in addition to English.

23 4.4.2.5. For internet purchases, the warning must, in addition to appearing
24 on the product label, be provided by including either the warning or a clearly marked hyperlink
25 using the words “CALIFORNIA WARNING” on the product display page, or by otherwise
26 prominently displaying the warning to the purchaser prior to completing the purchase. A warning
27 is not prominently displayed if the purchaser must search for it in the general content of the
28 website.

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2 4.4.3. If testing shows that any unit in a production lot contained cadmium in
3 excess of any applicable U.S. Food and Drug Administration action level for cadmium in
4 molluscan bivalves, Covered Products from that lot shall not be sold in California.

5 4.5. After the Independent Food Quality Auditor has provided the initial certification and
6 first annual certification required by Section 4.1.2 and set forth in Exhibit D, then an employee or
7 other agent of Clearwater who has received training adequate to conduct and document the audits
8 (“Internal Auditor”) may assume the Independent Food Quality Auditor’s responsibility for
9 subsequent annual audits and certifications required by Section 4.1.2 and other provisions of this
10 Consent Judgment. When an Internal Auditor assumes responsibility for providing certifications
11 pursuant to this Section, the first such annual certification, and any recommendations required
12 within one year after that first certification, under Sections 4.2.1.1 and 4.4.1.1, must be reviewed
13 and approved by the Independent Food Quality Auditor before being submitted to the People. In
14 order to obtain such approval, the Internal Auditor who prepared the certification shall provide
15 the Independent Food Quality Auditor with such documents, photographic evidence, information
16 regarding laboratory standards and practices, and other information or data as may be reasonably
17 necessary for the Independent Food Quality Auditor to evaluate and approve the certification.
18 The Internal Auditor may be replaced from time to time by another employee or entity selected
19 by Clearwater, who must receive prior training adequate to conduct and document the audits, but
20 such new Internal Auditors are not required to obtain the approval of the Independent Food
21 Quality Auditor prior to submitting the subsequent certifications required by this Consent
22 Judgment.

23 4.6. Clearwater will provide the People with Compliance Documentation concurrently
24 with the submissions of the Independent Auditor’s certifications required by Section 4.1.2 and
25 any other provision of this Consent Judgment, and upon receipt of a written request from the
26 People.

27 4.7. Notwithstanding the foregoing, Clearwater may, in the alternative, elect at any time
28 to voluntarily provide the Proposition 65 warning meeting the requirements set forth in Sections

1 4.4.2.1 through 4.4.2.5 above for Covered Products it sells in California (“Voluntary Warning” or
2 “Voluntary Warning Labeling”) in lieu of the obligations set forth in Sections 4.1.1, 4.1.2,
3 4.2.1.1, 4.2.1.2, 4.4.1.1, 4.5, and 4.6 above.

4 4.7.1. If Clearwater elects to implement Voluntary Warning Labeling, Clearwater
5 shall provide the People with written notice (“Voluntary Warning Notice”) identifying the
6 Covered Product(s) to be subject to Voluntary Warning Labeling. Within 90 days of such
7 notification (the “Voluntary Program Date”), Clearwater shall ensure that all Covered Products
8 sold into California and subject to Voluntary Warning Labeling are compliant with the terms of
9 this Consent Judgment. Provided that, beginning on the date it issues the Voluntary Warning
10 Notice, Clearwater uses its best efforts to provide the warnings required by this Section 4.7
11 (including timely completion of internal design, review, and sign-off, and timely sending the label
12 design to the printer), Clearwater shall not be subject to enforcement in connection with a
13 Covered Product sold or already in distribution during this 90-day period, as it may be extended
14 pursuant to this paragraph. If Clearwater anticipates being unable to comply with this provision
15 by the 90-day deadline, Clearwater will provide notice of this inability to the People, and will use
16 its best efforts to provide such notice to the People at least one week prior to the 90-day deadline.
17 Such notice will include an explanation for noncompliance and a description of outstanding
18 actions required to achieve full compliance and of the efforts it has undertaken to achieve full
19 compliance. Upon receipt of such notice, and after making a determination that Clearwater has
20 made reasonable efforts to comply with this provision and has provided a satisfactory explanation
21 for noncompliance, the People will establish an amended deadline for Clearwater to achieve full
22 compliance with this provision, taking into account information provided by Clearwater in the
23 notice. Prior to the date that it provides the People with a Voluntary Warning Notice for a
24 Covered Product, Clearwater will comply with the provision of Sections 4.1 through 4.6 for that
25 Covered Product.

26 4.7.2. If Clearwater elects to implement Voluntary Warning Labeling, then within
27 thirty (30) calendar days of the Voluntary Program Date, Clearwater will retain an Independent
28 Food Quality Auditor, who will provide written confirmation within ninety (90) calendar days of

1 the Voluntary Program Date, and annually thereafter as long as Voluntary Warning Labeling is in
2 place, that the cadmium reduction measures set forth in Exhibit C have been fully satisfied, and
3 that the testing of the product, in compliance with Sections 3.8, 3.9, 3.12, 4.1.1 and Exhibit B,
4 shows that cadmium levels in any unit in a production lot of Covered Products sold, or intended
5 to be sold, in California do not exceed any applicable U.S. Food and Drug Administration action
6 level for cadmium in molluscan bivalves. This certification shall be in the form set forth in
7 Exhibit E. After the initial evaluation by the Independent Food Quality Auditor, an Internal
8 Auditor may assume annual compliance obligations pursuant to Section 4.5 above.

9 4.7.3. Clearwater may, at any time, discontinue Voluntary Warning Labeling on
10 any Covered Product by notifying the People and complying with the obligations set forth in
11 Sections 4.1 through 4.6 above.

12 4.8. Except for the settlement payments required by Section 5.1, under no circumstances
13 (including those set forth in Section 8 below) shall Clearwater be subject to enforcement in
14 connection with a Covered Product already in distribution prior to the Effective Date of this
15 Consent Judgment. Nothing in this Consent Judgment shall be interpreted to require Clearwater,
16 its customers, or any wholesaler or retailer of Clearwater Covered Products to destroy, or restrict
17 sales of, Covered Products in distribution prior to a compliance date set forth in this Consent
18 Judgment.

19 **5. SETTLEMENT PAYMENTS**

20 5.1. Within fifteen (15) calendar days after the Effective Date, Clearwater shall make a
21 payment to the People and as set forth in Exhibit A hereto, which shows the allocation of the
22 payment between penalties pursuant to Health and Safety Code section 25249.7, subdivision
23 (b)(1), and attorneys' fees and costs.

24 5.2. Penalty payments and reimbursements for the People's fees and costs shall be made
25 by wire transfer, or by certified check. The wire transfer or check shall be made payable to
26 "Office of the California Attorney General" and bear the notation "Clearwater (People v.
27 PAFCO), OK2021950017." If payment is made by check, Defendant shall deliver it to:

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1 Elizabeth Song
2 Deputy Attorney General
3 Office of the Attorney General
4 300 South Spring Street, Suite 1702
5 Los Angeles, CA 90013-1230

6 If payment is by wire transfer, Defendant shall comply with the wire transfer
7 instructions provided by Plaintiff upon request. Defendant is responsible for any bank charges
8 incurred for processing wire transfers.

9 **6. ALLOCATION OF PENALTY PAYMENTS**

10 6.1. Penalty monies shall be paid pursuant to Health and Safety Code section 25249.7,
11 subdivision (b)(1), and apportioned in accordance with Health and Safety Code section 25249.12,
12 subdivision (d), with 75% of these funds remitted to the California Office of Environmental
13 Health Hazard Assessment, and the remaining 25% to the Office of the Attorney General.

14 6.2. The sum of \$304,164.98, and any interest accrued thereon, paid to the Attorney General
15 pursuant to this Consent Judgment, shall be administered by the California Department of Justice
16 and shall be used by the Environment Section of the Public Rights Division of the Attorney
17 General's Office, until all funds are exhausted, for any of the following purposes: (1)
18 implementation of the Attorney General's authority to protect the environment and natural
19 resources of the State pursuant to Government Code section 12600, et seq., and as Chief Law
20 Officer of the State of California pursuant to Article V, section 13 of the California Constitution;
21 (2) enforcement of laws related to environmental protection, including, but not limited to, chapters
22 6.5 and 6.95, division 20, of the California Health and Safety Code; (3) enforcement of the Unfair
23 Competition Law, Business and Professions Code section 17200, et seq., as it relates to protection
24 of the environment and natural resources of the State of California; or (4) other environmental
25 actions or initiatives which benefit the State of California and its citizens as determined by the
26 Attorney General. Such funding may be used for the costs of the Attorney General's investigation,
27 filing fees and other court costs, payment to expert witnesses and technical consultants, purchase
28 of equipment, laboratory analyses, personnel costs, travel costs, and other costs necessary to pursue

1 environmental actions or initiatives investigated or initiated by the Attorney General for the benefit
2 of the State of California and its citizens.

3 **7. PAYMENT TO PRIVATE ENFORCERS**

4 7.1. Pursuant to Health & Safety Code section 25249.7, subdivision (j), Clearwater shall
5 make a payment of \$6,000 to compensate for the attorneys' fees that Public Health and Safety
6 Advocates, LLC (PHSA) incurred relating to the Proposition 65 Notice it served for two Covered
7 Products. At the time that this Consent Judgment is lodged with the Court, PHSA will submit a
8 declaration to the Court, consistent with California Code of Regulations, title 11, section 3201,
9 subdivision (e), establishing that it reasonably incurred at least \$6,000 in fees with respect to this
10 matter. This payment will be due within fifteen (15) calendar days of the Effective Date, and will
11 be payable as set forth in Exhibit A.

12 7.2. PHSA is not a party to this Consent Judgment, and nothing in this provision
13 constitutes an intent by the parties to confer standing on PHSA, or to confer a right on PHSA to
14 enforce any provision of this Consent Judgment.

15 **8. ADDITIONAL ENFORCEMENT ACTIONS; CONTINUING OBLIGATIONS**

16 8.1. The People may, by motion or order to show cause before the Superior Court of
17 Alameda County, enforce the terms and conditions contained in this Consent Judgment. In any
18 action brought by the People to enforce this Consent Judgment, the People may seek whatever
19 fines, costs, penalties, or remedies as provided by law for failure to comply with this Consent
20 Judgment, and seek redress for any violations of this Consent Judgment (including, without
21 limitation, violations based on evidence that a Covered Product sold in California contained
22 concentrations in excess of the Maximum Cadmium Level after the Effective Date).

23 8.2. The People will monitor Clearwater's compliance with the terms of this Consent
24 Judgment and may conduct random testing of Covered Products sold in California to ensure they
25 are in compliance with those terms. If the People's testing shows that a Covered Product sold in
26 California without a compliant Proposition 65 warning contains cadmium in excess of the
27 Cadmium Action Level of 180 parts per billion, the People may provide evidence of this
28 exceedance to Clearwater, and Clearwater shall then do all of the following:

1 (1) Consult with the Independent Food Quality Auditor and provide a report to
2 the People outlining the circumstances that gave rise to this exceedance and the steps Clearwater
3 shall take to prevent it from re-occurring;

4 (2) Pay the laboratory costs the People incurred in obtaining sample(s)
5 showing cadmium level(s) in excess of 180 parts per billion; and

6 (3) Ensure compliance with Section 4 of this Consent Judgment with respect to
7 any future sales that Clearwater makes of Covered Products that originate from the same
8 production lot as the product that showed the exceedance.

9 8.3. Where a violation of this Consent Judgment also constitutes a violation of
10 Proposition 65, the Unfair Competition Law, the False Advertising Law (Bus. & Prof. Code,
11 § 17500 et seq.), or other laws, independent of this Consent Judgment, the People may seek in
12 another action whatever fines, costs, penalties, or remedies are provided for by law for failure to
13 comply with Proposition 65, the Unfair Competition Law, the False Advertising Law, or any
14 other laws. In any new action brought by the People or another enforcer alleging subsequent
15 violations of law, Clearwater may assert any and all available defenses. If the People identify
16 repeated or continuing violations of this Consent Judgment they may, in addition to any other
17 available remedies, require Clearwater to engage an Independent Auditor to investigate the cause
18 of these violations and provide a written report summarizing ways of avoiding them. Clearwater
19 and its Internal Auditor will cooperate with, and provide relevant information to, the Independent
20 Auditor, who will provide a report of its findings to the People.

21 8.4. By entering into this Consent Judgment, the People do not waive any right to take
22 further enforcement actions on any violations not covered by the Complaint or this Consent
23 Judgment. Nothing in this Consent Judgment shall be construed as diminishing Clearwater's
24 continuing obligations to comply with Proposition 65 or the Unfair Competition Law in its future
25 activities. Without limiting the foregoing, the People reserve the right to assert claims against
26 Clearwater under Proposition 65 and the Unfair Competition Law in the event that Clearwater
27 shifts its Harvest Areas away from the current Harvest Areas to Harvest Areas where naturally
28 occurring levels of cadmium and lead are significantly lower, and it fails to provide Proposition

65 warnings that would otherwise be required for products harvested in such new Harvest Areas. Prior to filing such an action, the People will meet and confer with Clearwater in order to evaluate the cadmium concentrations at which warning(s) would be required for those Products.

9. CLAIMS COVERED

9.1. Except as provided elsewhere herein, this Consent Judgment is a final and binding resolution between the People and Clearwater of any and all violations of Proposition 65 or the Unfair Competition Law, Business and Professions Code Sections 17200 et seq., alleged in the Complaint arising from the alleged failure of Clearwater to provide clear and reasonable warnings pursuant to Proposition 65 of exposures to cadmium in Covered Products prior to the Effective Date.

9.2. This Consent Judgment shall apply to, be binding upon, and inure to the benefit of, the Parties, their divisions, subdivisions, subsidiaries, and affiliates, and the successors or assigns of each of them. Unless otherwise provided herein, any change in ownership, partnership status, or corporate status of Clearwater or any successor entity, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Clearwater's responsibilities under this Consent Judgment, and Clearwater shall be responsible and shall remain responsible for carrying out all activities required of it under this Consent Judgment.

9.3. Following the Effective Date, compliance with the terms of this Consent Judgment constitutes compliance by Clearwater with Proposition 65 and the Unfair Competition Law with respect to its failure to warn about exposures to cadmium from the Covered Products.

10. MODIFICATION

10.1. This Consent Judgment may be modified from time to time by express written agreement of Clearwater and the People with the approval of the Court, or by noticed motion of either the People or Clearwater with an order of the Court, in accordance with law.

11. PROVISION OF NOTICE.

11.1. When any Party is entitled to receive any notice under this Consent Judgment, the notice shall be sent by U.S. Mail or courier, and by electronic mail. Any Party may modify the

1 person and address to whom the notice is to be sent by sending each other Party written notice of
2 the change.

3 11.2. Notices to the People under this Consent Judgment shall be sent to:

4 Elizabeth Song
5 Deputy Attorney General
6 Office of the Attorney General
7 300 South Spring Street, Suite 1702
8 Los Angeles, CA 90013-1230
9 Elizabeth.Song@doj.ca.gov

10 11.3. Notices to Clearwater shall be sent to:

11 Telaina Kelly
12 V.P. Legal, Corporate Secretary
13 757 Bedford Highway
14 Bedford NS B4A 3Z7
15 Canada
16 tkelly@clearwater.ca

17 12. MISCELLANEOUS PROVISIONS

18 12.1. Authority to Stipulate to Consent Judgment: Each signatory to this Consent
19 Judgment certifies that he or she is fully authorized by the Party he or she represents to enter into
20 this Consent Judgment on behalf of the Party represented and legally to bind that party.

21 12.2. Retention of Jurisdiction: This Court shall retain jurisdiction of this matter to
22 implement and enforce this Consent Judgment.

23 12.3. Entire Agreement: This Consent Judgment contains the sole and entire agreement
24 and understanding of the Parties with respect to the entire subject matter hereof, and any and all
25 prior discussions, negotiations, commitments, and understandings related hereto. No
26 representations, oral or otherwise, express or implied, other than those contained herein have been
27 made by any party hereto. No other agreements not specifically referred to herein, oral or
28 otherwise, shall be deemed to exist or to bind any of the Parties.

12.4. Execution in Counterparts: This Consent Judgment may be executed in counterparts,
which taken together shall be deemed to constitute one and the same document.

1 12.5. Entry of Consent Judgment Required: This Consent Judgment shall be null and void,
2 and be without any force or effect, unless entered by the Court in this matter. If the Court does
3 not enter this Consent Judgment, nothing herein shall be construed as an admission by Clearwater
4 of any fact, issue of law, or violation of law.

5 **IT IS SO ORDERED.**


6
7 Dated: _____


HON. SOMNATH CHATTERJEE

8
9 **IT IS SO STIPULATED.**

10
11 Dated: February 5, 2025

ROB BONTA
Attorney General of California
LAURA J. ZUCKERMAN
Supervising Deputy Attorney General

14
15 
ELIZABETH Y. SONG
DENNIS A. RAGEN
DIJE NDREU
Deputy Attorneys General
*Attorneys for the People of the State of
California*

16
17
18
19
20 Dated: FEBRUARY 5, 2025

21
22 
TELAINA KELLY
V.P. LEGAL, CORPORATE SECRETARY
For Clearwater Seafoods, LP

- 1 **Exhibits:**
- 2 Exhibit A: Payment Instructions
- 3 Exhibit B: Laboratory Standards and Instructions
- 4 Exhibit C: Cadmium Reduction Measures
- 5 Exhibit D: Certification by Auditor
- 6 Exhibit E: Certification by Auditor (Voluntary Warning)

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Exhibit A
Payment Instructions

Clearwater shall make the payments set forth in Columns B and D below by wire transfer or certified check, payable to "Office of the California Attorney General." Each wire transfer or check shall bear the notation "Clearwater (People v. PAFCO) OK2021950017," and be sent to:

Elizabeth Song
Deputy Attorney General
Office of the Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1230

Clearwater shall make the payment set forth in Column C below by certified check, payable to "Office Environmental Health Hazard Assessment" (OEHHA). The check shall bear on its face the name of the Settling Defendant and "Clearwater (People v. PAFCO) OK2021950017," and be sent to:

Senior Accounting Officer – MS 19-B
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-0410

A	B	C	D
Total Civil Penalty	Civil Penalty Payable to AG	Civil Penalty Payable to OEHHA	Attorney' Fees and Costs Payable to the AG
\$ 110,000	\$27,500	\$82,500	\$194,164.98

Clearwater shall make the \$6,000 payment required by Section 7.1 by check payable to the Cornerstone Law Firm, PC, delivered to:

Davar David Danialpour
Cornerstone Law Firm, PC
357 S. Robertson Blvd., 2nd Floor
Beverly Hills, CA 90211

Exhibit B
Laboratory Standards and Instructions

QUALIFIED LABORATORIES

Analytical guidance for Laboratories:

Analyses must utilize a method that employs ICP-MS. Laboratories must have the capability of controlling contamination throughout the analytical process, including sample compositing, sample digestion, and the heavy metal determination steps. In order to meet the analytical objectives, the use of high purity acids will be required as well the use of closed-vessel type sample digestion procedures. The conditions and procedures needed to successfully meet the analyses are described in the FDA Elemental Analysis Manual.

<http://www.fda.gov/downloads/Food/FoodScienceResearch/LaboratoryMethods/UCM377005.pdf>

<http://www.fda.gov/Food/FoodScienceResearch/LaboratoryMethods/ucm2006954.htm>

See sample preparation in EAM 2.1 (fda.gov), as set forth in the FDA EAM, available at <https://www.fda.gov/food/laboratory-methods-food/elemental-analysis-manual-eam-food-and-related-products>.

Particular attention must be given to recovery information offered to attribute accuracy to these analyses. The levels of targeted heavy metals used to fortify products and ingredients for analyte recovery must be in the range of 50-200% of the targeted heavy metal level found in the product, if the level of heavy metal in the product is in a quantifiable range. As a measure of accuracy, laboratories are also encouraged to provide recovery information on certified reference materials with heavy metals levels similar to these products or ingredients.

Participating laboratories must be accredited, preferably under ISO 17025 to conduct low level cadmium analyses in foods by ICP-MS.

The analytical objective for cadmium analysis, i.e., the Limit of Quantification (LOQ), for finished products and for the major ingredients is 0.005 mg/kg.

Exhibit C
Cadmium Reduction Measures

1. A Hazard Analysis Critical Control Point program applicable to all its seafood products in place. This program will include a specific focus on heavy metals.
2. Ingredients must comply with applicable Food Chemical CODEX lead and cadmium specifications.
3. Clearwater's Harvest Areas (ocean water and sediment) are to be monitored for cadmium levels that will not contribute to or accumulate cadmium levels above 200 ppb in the seafood tissue, or, where Clearwater has elected Voluntary Warning Labeling, above, and as long as that election is in effect, any applicable U.S. Food and Drug Administration action level for cadmium in molluscan bivalves in the seafood tissue. Harvest Areas must be sufficiently distant from the coastline (at least 12 miles) in order to minimize cadmium in the seafood tissue.
4. The potable water supply is to be monitored for lead and cadmium levels. The internal distribution system may not be a source of lead or cadmium contamination, as verified by point of use testing versus influent lead/cadmium level.
5. All food contact equipment, utensils, and containers are to be constructed from lead/cadmium-free materials (food-grade stainless steel or plastic).
6. Lubricants, sealants, and similar materials used in direct food contact areas, as well as in areas that have the potential to contaminate product, are to be food grade. This is to include storage areas in addition to processing and packing areas.
7. Preventative devices, including screens, filters, magnets, metal detection devices, and manual inspection are to be used to remove foreign material (metal, wood, plastic, etc).
8. Finished product packaging materials must comply with CONEG (Coalition of Northeastern Governors) agreement guidelines.
9. Process control is to be validated through approved audit program processes, and finished products are to be verified and periodically tested for lead and cadmium, with detection levels no higher than 10 ppb.
10. Production lot identification and traceability is to be maintained for all finished products. Clearwater must be able to document finished product lots and to trace finished product shipments one level forward to the customer.

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11. Any raw seafood used as an ingredient is to be sourced from suppliers that provide a certificate of analysis for lead and cadmium from a laboratory that is ISO 17025 accredited using FDA EAM analytical methods.
12. Clearwater is to periodically evaluate whether depuration is a practical and commercially feasible means of reducing the levels of heavy metals in its [seafood products][coastal bivalve products] and will implement any depuration measures that are practical, commercially feasible, and likely to cause a significant reduction in such levels of heavy metals in its products.

Exhibit D
Certification by Independent Food Quality Auditor [Clearwater]

[Letterhead of Independent Food Processing Auditor.]

I, _____ [Name] _____, certify as follows with respect to Clearwater's seafood products:

1. A Hazard Analysis Critical Control Point program applicable to all its seafood products is in place. This program includes a specific focus on heavy metals.
2. Ingredients comply with applicable Food Chemical CODEX lead and cadmium specifications.
3. Clearwater's Harvest Areas (ocean water and sediment) are monitored for cadmium levels that could contribute to or accumulate cadmium levels above 200 ppb in the seafood tissue. Clearwater's Harvest Areas are all at least 12 miles from the coastline to minimize cadmium in the seafood tissue.
4. The potable water supply is monitored for lead and cadmium levels. The internal distribution system is not a source of lead/cadmium contamination, as verified by point of use testing versus influent lead/cadmium level.
5. All food contact equipment, utensils, and containers are constructed from lead/cadmium-free materials (food-grade stainless steel or plastic).
6. Lubricants, sealants, and similar materials used in direct food contact areas, as well as in areas that have the potential to contaminate product, are food grade. This includes storage areas in addition to processing and packing areas.
7. Preventative devices, including screens, filters, magnets, metal detection devices, and manual inspection are used to remove foreign material (metal, wood, plastic, etc).
8. Finished product packaging materials comply with CONEG (Coalition of Northeastern Governors) agreement guidelines.
9. Process control is validated through an approved audit program processes and finished products are verified and periodically tested for lead and cadmium with detection levels at 10 ppb.
10. Production lot identification and traceability is maintained for all finished products. Clearwater is able to document finished product lots and to trace finished product shipments one level forward to the customer.
11. Any raw seafood used as an ingredient is sourced from suppliers that provide a certificate of analysis for lead and cadmium from a laboratory that is ISO 17025 accredited using FDA EAM analytical methods.

Exhibit D, page 2

12. A Representative Number of Production Lots of Clearwater's Covered Products have been tested as required by Section 3.8, 3.9, 3.12, and 4.1.1 of the Consent Judgment entered into between the People and Clearwater (Consent Judgment).

- a. The Running Average Cadmium Concentration has not exceeded 180 ppb during the annual period from ____ 20__ to ____ 20__ [or]
 - b. The Running Average Cadmium Concentration for the period from ____ 20__ to ____ 20__ fell between 180 and 200 ppb. I did the following:
 - i. I evaluated the cause of the exceedance and commercially feasible measures to prevent it from re-occurring. My report summarizing my evaluation and recommendations is attached. Clearwater has implemented my recommendations as follows: [Insert summary of implantation.]
 - ii. Clearwater has implemented follow-up testing as required by subsection 4.2.1.2 of the Consent Judgment and implemented the requirements set forth in that subsection, as follows: [Insert description] [or]
 - c. The Running Average Cadmium Concentration for the period from ____ 20__ to ____ 20__ exceeded 200 ppb, Clearwater took the steps required by subsection 4.2 - 4.4 of the Consent Judgment, as follows: [Insert description.]
13. Testing did not show that any unit in any production lot had a cadmium concentration in excess of 1 ppm. [or] Testing from the following production lots showed a cadmium concentration in excess of 1 ppm. [Insert production lot number or descriptor] No products from that production lot were sold in California.
14. I have evaluated whether depuration, or other means of reducing heavy metals in Clearwater's products, would be a practical and commercially feasible means of reducing the levels of heavy metals in its [seafood products][coastal bivalve products]. I reached the following conclusions: [Insert description of measures implemented, or if measures were not implemented, explain why they were not a practical, commercially feasible and effective means of reducing the levels of heavy metals in the seafood products.]

[Signature of Auditor]

Exhibit E
Certification by Independent Food Quality Auditor (Voluntary Warning) [Clearwater]
[Letterhead of Independent Food Processing Auditor.]

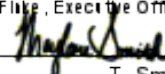
I, _____ [Name] _____, certify as follows with respect to Clearwater's seafood products:

1. A Hazard Analysis Critical Control Point program applicable to all its seafood products is in place. This program includes a specific focus on heavy metals.
2. Ingredients comply with applicable Food Chemical CODEX lead and cadmium specifications.
3. Clearwater's Harvest Areas (ocean water and sediment) are monitored for cadmium levels that could contribute to or accumulate cadmium levels above any applicable U.S. Food and Drug Administration action level for cadmium in molluscan bivalves in the seafood tissue. Clearwater's Harvest Areas are all at least 12 miles from the coastline to minimize cadmium in the seafood tissue.
4. The potable water supply is monitored for lead and cadmium levels. The internal distribution system is not a source of lead/cadmium contamination, as verified by point of use testing versus influent lead/cadmium level.
5. All food contact equipment, utensils, and containers are constructed from lead/cadmium-free materials (food-grade stainless steel or plastic).
6. Lubricants, sealants, and similar materials used in direct food contact areas, as well as in areas that have the potential to contaminate product, are food grade. This includes storage areas in addition to processing and packing areas.
7. Preventative devices, including screens, filters, magnets, metal detection devices, and manual inspection are used to remove foreign material (metal, wood, plastic, etc).
8. Finished product packaging materials comply with CONEG (Coalition of Northeastern Governors) agreement guidelines.
9. Process control is validated through an approved audit program processes and finished products are verified and periodically tested for lead and cadmium with detection levels at 10 ppb.
10. Production lot identification and traceability is maintained for all finished products. Clearwater is able to document finished product lots and to trace finished product shipments one level forward to the customer.
11. Any raw seafood used as an ingredient is sourced from suppliers that provide a certificate of analysis for lead and cadmium from a laboratory that is ISO 17025 accredited using FDA EAM analytical methods.

Exhibit E, page 2

12. A Representative Number of Production Lots of Clearwater's Covered Products have been tested as required by Sections 3.8, 3.9, 3.12, and 4.1.1 of the Consent Judgment entered into between the People and Clearwater (Consent Judgment). This testing shows that cadmium levels in any unit in a production lot of Covered Products sold, or intended to be sold, in California do not exceed any applicable U.S. Food and Drug Administration action level for cadmium in molluscan bivalves.
13. Testing did not show that any unit in any production lot had a cadmium concentration in excess of 1 ppm. [or] Testing from the following production lots showed a cadmium concentration in excess of 1 ppm. [Insert production lot number or descriptor] No products from that production lot were sold in California.
14. I have evaluated whether depuration, or other means of reducing heavy metals in Clearwater's products, would be a practical and commercially feasible means of reducing the levels of heavy metals in its [seafood products][coastal bivalve products]. I reached the following conclusions: [Insert description of measures implemented, or if measures were not implemented, explain why they were not a practical, commercially feasible and effective means of reducing the levels of heavy metals in the seafood products.]

[Signature of Auditor]

<p align="center">SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA</p>	<p align="center">Reserved for Clerk's File Stamp</p>
<p>COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612</p>	<p align="center">FILED Superior Court of California County of Alameda 04/28/2025</p>
<p>PLAINTIFF/PETITIONER: The People of the State of California</p>	<p>Chad Finke, Executive Officer / Clerk of the Court By:  Deputy</p>
<p>DEFENDANT/RESPONDENT: Pacific American Fish Company, Inc et al</p>	<p>T. Smith</p>
<p align="center">CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6</p>	<p>CASE NUMBER: RG20085046</p>

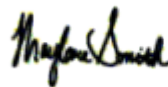
I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Consent Judgment ClearWater Fine Foods (USA) Inc. entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

Elizabeth Y Song
DOJ - ATTORNEY GENERAL - LOS ANGELES
esong@hadsellstormer.com

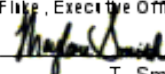
Dated: 04/28/2025

Chad Finke, Executive Officer / Clerk of the Court

By:



T. Smith, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612		FILED Superior Court of California County of Alameda 04/28/2025 Chad Finke, Executive Officer / Clerk of the Court By:  Deputy T. Smith
PLAINTIFF/PETITIONER: The People of the State of California		
DEFENDANT/RESPONDENT: Pacific American Fish Company, Inc et al		
CERTIFICATE OF MAILING		CASE NUMBER: RG20085046

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the attached document upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Gary C. Cooper
Law Ofc. of Gary C. Cooper
247 Yale Ave.
Kensington, CA 94708-

Ho-El Park
Law Offices of Ho-El Park , P.C
333 City Boulevard West, Suite 1700
Orange, CA 92868-

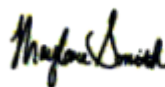
Miles L. Prince
1912 East Vernon Avenue
Suite 100
Los Angeles, CA 90058-

William F. Tarantino
Morrison & Foerster LLP
425 Market Street, Suite 3300
San Francisco, CA 94105-2482

Dated: 04/28/2025

Chad Finke, Executive Officer / Clerk of the Court

By:



T. Smith, Deputy Clerk

CERTIFICATE OF MAILING