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11 Consumer Advocacy Group, Inc.

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

14 **CONSUMER ADVOCACY GROUP, INC.,**
15 **in the public interest,**

16 **Plaintiff,**

17 **v.**

18 **COLOMBINA USA, INC., a Delaware**
19 **Corporation; COLOMBINA SA, a**
20 **Colombian Corporation; COLOMBINA DE**
21 **PUERTO RICO, LLC, a Puerto Rican**
22 **Limited Liability Corporation; WALDO'S**
23 **DOLAR MART DE MEXICO, S DE R L DE**
24 **CV, a Mexican Corporation; DOES 1-20;**

25 **Defendants.**

26 **I. INTRODUCTION**

27 1.1 This Consent Judgment is entered into by and between plaintiff, CONSUMER
28 ADVOCACY GROUP, INC. (referred to as "CAG") acting on behalf of itself and in the interest
of the public, and defendants, COLOMBINA USA, INC. and COLOMBINA DE PUERTO
RICO, LLC (referred to as "Defendants" collectively) with each a Party to the action and
collectively referred to as "Parties."

1.2 **Defendants and Products**

FILED
Superior Court of California
County of Los Angeles

DEC 14 2016

Sherri B. Carter, Executive Officer/Clerk
By Reyna Navarro, Deputy

REC'D

OCT 05 2016
FILING WINDOW

CASE NO. BC585928

CONSENT JUDGMENT [REDACTED]

Health & Safety Code § 25249.5 *et seq.*

Dept. 34

Judge: Hon. Michael P. Linfield

Complaint filed: June 23, 2015

CONSENT JUDGMENT [REDACTED]

1 1.2.1 COLOMBINA USA, INC. is a Delaware corporation and COLOMBINA
2 DE PUERTO RICO, LLC is a limited liability company of Puerto Rico both of which employ
3 ten or more persons. Defendants manufacture, cause to be manufactured, sell, and/or distribute
4 Wafer Cookies. For purposes of this Consent Judgment, Defendants are deemed a person in the
5 course of doing business in California and are subject to the provisions of the Safe Drinking
6 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.
7 ("Proposition 65").

8 1.3 Chemicals Of Concern

9 1.3.1 Lead and Lead Compounds are known to the State of California to cause
10 cancer and/or birth defects or other reproductive harm.

11 1.3.2 Cadmium and Cadmium Compounds are known to the State of California
12 to cause cancer and/or birth defects or other reproductive harm.

13 1.4 Notices of Violation.

14 1.4.1 On July 16, 2014, CAG served Defendants, Colombina S.A., Waldos
15 Dolar Mart De Mexico., and various public enforcement agencies with a document entitled dated
16 July 14, 2014 "60-Day Notice of Violation" ("Notice") that provided the recipients with notice
17 of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in
18 California of exposures to Lead and Cadmium contained in Wafer Cookies sold by Defendants.
19 No public enforcer has commenced or diligently prosecuted the allegations set forth in the
20 Notice.

21 1.5 Complaint.

22 On June 23, 2015, CAG filed a Complaint for civil penalties and injunctive relief
23 ("Complaint") in Los Angeles County Superior Court, Case No. BC585928, against Defendants.
24 The Complaint alleges, among other things, that Defendants violated Proposition 65 by failing to
25 give clear and reasonable warnings of exposure to Lead from the Wafer Cookies.

1 1.5.1 The Complaint is hereby amended to include allegations that Defendants
2 violated Proposition 65 by failing to give clear and reasonable warnings of exposure to Cadmium
3 and Cadmium Compounds from the Wafer Cookies as identified in the Notice.

4 **1.6 Consent to Jurisdiction**

5 For purposes of this Consent Judgment, the Parties stipulate that this Court has
6 jurisdiction over the allegations of violations contained in the Complaint and personal
7 jurisdiction over Defendants as to the acts alleged in the Complaint, that venue is proper in the
8 County of Los Angeles and that this Court has jurisdiction to enter this Consent Judgment as a
9 full settlement and resolution of the allegations contained in the Complaint and of all claims
10 which were or could have been raised by any person or entity based in whole or in part, directly
11 or indirectly, on the facts alleged therein or arising therefrom or related thereto.

12 **1.7 No Admission**

13 This Consent Judgment resolves claims that are denied and disputed. The Parties enter
14 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
15 the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment
16 shall be construed as an admission by the Parties of any material allegation of the Complaint
17 (each and every allegation of which Defendants deny), any fact, conclusion of law, issue of law
18 or violation of law, including without limitation, any admission concerning any violation of
19 Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, or the
20 meaning of the terms "knowingly and intentionally expose" or "clear and reasonable warning" as
21 used in Health and Safety Code section 25249.6. Nothing in this Consent Judgment, nor
22 compliance with its terms, shall constitute or be construed as an admission by the Parties of any
23 fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by
24 any Defendant, its officers, directors, employees, or parent, subsidiary or affiliated corporations,
25 or be offered or admitted as evidence in any administrative or judicial proceeding or litigation in
26 any court, agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice,
27 waive or impair any right, remedy, argument, or defense the Parties may have in any other or
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1 future legal proceeding, except as expressly provided in this Consent Judgment.

2 **2. DEFINITIONS**

3 2.1 "Covered Products" means Defendant's wafer cookies, which includes, without
4 limitation, "Sugar Wafer," "Bridge," and "Capri" brand products. "Covered Products" are
5 limited to those products which are sold by the Defendants.

6 2.2 "Effective Date" means the date that this Consent Judgment is approved by the
7 Court.

8 2.3 "Lead" means lead and lead compounds.

9 2.4 "Cadmium" means Cadmium and Cadmium compounds.

10 2.4 "Notice" means the July 16, 2014 60 Day Notice of Violation served on
11 Defendants by CAG.

12 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**
13 **WARNINGS.**

14 3.1 Beginning six months from the Effective Date, Defendant shall: (a) not
15 manufacture for sale in the State of California, distribute into the State of California, or directly
16 sell in the State of California, any Covered Product unless each such unit of the Covered Product
17 (1) qualifies as a "Lead Reformulated Covered Product" and/or a "Cadmium Reformulated
18 Product" under Section 3.3, or (2) meets the warning requirements under Section 3.2; and (b)
19 implement and ensure compliance with the Good Manufacturing Practices set forth in Section
20 3.5 below to ensure the lowest feasible level of Lead and Cadmium in its Covered Products.

21 **3.2 Clear and Reasonable Warnings**

22 If Defendant provides a warning for a Covered Product sold in California pursuant to
23 Section 3.1, any warning provided pursuant to this section shall be affixed to the packaging of
24 the Covered Products, or directly on the Covered Products, or point of sale/shelf warnings,
25 internet warnings, or catalog warnings, and be prominently placed with such conspicuousness as
26 compared with other words, statements, designs, or devices as to render it likely to be read and
27 understood by an ordinary individual under customary conditions before purchase or use. Such
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1 warning shall conform to the requirements set out in California Code of Regulations, title 27,
2 section 25601, or the "safe harbor" warning methods set out in California Code of Regulations,
3 title 27, section 25603.2(a), or state, as applicable, the following:

4 **WARNING: This product contains lead and cadmium, chemicals known to**
5 **the State of California to cause cancer and birth defects or other**
6 **reproductive harm.**

7 For any Covered Products still existing in Defendant's inventory as of the Effective Date,
8 Defendant shall place a Proposition 65 compliant warning. Any warning provided pursuant to
9 this section shall be affixed to the packaging of, or directly on the Covered Products, and be
10 prominently placed with such conspicuousness as compared with other words, statements,
11 designs, or devices as to render it likely to be read and understood by an ordinary individual
12 under customary conditions before purchase or use.

13 **3.3 Calculation of Lead and Cadmium Levels;**

14 **3.3.1 Lead Reformulated Covered Products**

15 A Lead Reformulated Covered Product is one that contains no more than fifty (50) parts
16 per billion ("ppb") of Lead by weight. Such concentration shall be determined by use of a test
17 performed in accordance with Section 3.4 below. For Covered Products that are not a Lead
18 Reformulated Covered Products, Defendant shall provide the warning set forth in Section 3.2.

19 For the purposes of this Consent Judgment, Defendant shall be afforded a naturally
20 occurring allowance of up to 0.4 parts per million (400 ppb) of Lead for any cocoa powder in the
21 Covered Products. For purposes of this Consent Judgment only, the Parties stipulate that the
22 chocolate-containing Sugar Wafer brand Covered Products contain 2.2% cocoa powder; the
23 Bridge brand Covered Products contain 5.76% cocoa powder; and the Capri brand Covered
24 Products contain 2.9% cocoa powder; for other chocolate-containing Covered Products that
25 currently exist or may be sold in the future, Defendants may submit cocoa powder percentages
26 for purposes of evaluating any naturally occurring level of Lead.

27 **3.3.2 Modification of "Naturally Occurring" Allowance for Lead**

1 The naturally occurring allowance of up to 0.4 parts per million (400 ppb) of Lead for
2 any cocoa powder in the Covered Products may be modified by (a) the Attorney General; or (b)
3 Defendant, if it is determined through a legal proceeding and upon approval of the court that the
4 naturally occurring level stated above is higher or lower than the "lowest level currently feasible"
5 as stated in California Code of Regulations, title 27, section 25501.

6 Prior to seeking such modification, Defendant shall provide written notice to CAG that it
7 intends to seek the modification. The Parties shall have ninety (90) days in which to confer
8 concerning the modification. If the Parties are unable to agree on a modification to the Consent
9 Judgment, Defendant may file a motion with the Court seeking a modification of the Consent
10 Judgment. In any motion by Defendant seeking such modification, the burden of producing
11 evidence and of proof shall be on Defendant to prove that the modification sought by the
12 Defendant is the "lowest level currently feasible." The parties hereby agree that the Consent
13 Judgment should be modified to reflect any agreement of the parties or any determination by the
14 Court concerning what is the "lowest level currently feasible" for lead in any cocoa powder in
15 the Covered Products.

16 3.3.3 Cadmium Reformulated Covered Products

17 A Cadmium Reformulated Covered Product is one that contains no more than 146 ppb
18 for Covered Products with 28g serving size (Sugar Wafer brand Covered Products), 129 ppb for
19 Covered Products with a 31.5g serving size (Capri brand Covered Products), or 122 ppb for
20 Covered Products with a 33.5 gram serving size (Bridge brand Covered Products) by weight.
21 Such concentration shall be determined by use of a test performed in accordance with Section 3.4
22 below. For Covered Products that are not a Cadmium Reformulated Covered Products,
23 Defendant shall provide the warning set forth in Section 3.2.

24 For purposes of this Consent Judgment only the parties recognize and agree that there is a
25 level of naturally occurring Cadmium in cocoa powder. However, that level is not readily
26 calculated or agreed. In recognition and compromise of that fact, the parties have agreed to set
27 cadmium levels for reformulated products as described above.

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1 requirements discussed in Section 3.4 are not applicable to any Covered Product for which
2 Defendant has provided the warning as specified in Section 3.2.

3 3.4.4 Defendant shall retain the laboratory test data and certifications (if
4 applicable) for a period of three (3) years from the date of testing. If there is an allegation that
5 a Covered Product is in violation of Section 3.1, CAG may make a written request to Defendant
6 delivered to the address of Defendant as set forth in Section 16, for data generated in
7 compliance with Section 3.4.4. In response, within thirty (30) days of CAG's written request,
8 Defendant will provide to CAG, the date the analysis was performed, the name of the laboratory
9 conducting the test, the test method used by the laboratory, the detection limit used by the
10 laboratory, and the analytical results.

11 3.5 Use of Good Manufacturing Practices

12 Defendant shall implement and continue to use good manufacturing practices and quality
13 control measures (the "Good Manufacturing Practices"), which may be adjusted from time to
14 time, intended to reduce Lead and Cadmium in the Covered Products to the "lowest level
15 currently feasible," under 21 C.F.R. Section 110.110(c), Defendant shall implement and continue
16 to obligate its contract manufacturers to use ingredients with the lowest feasible levels of Lead
17 and Cadmium by periodically, and at least once a year, reviewing alternate ingredient supplies
18 with the intention of reducing, to the extent feasible, the contribution of Lead and Cadmium from
19 such ingredients. The term "feasible" as used in this Consent Judgment means considering the
20 reasonable availability and reliability of ingredient and formulation supply; cost; and
21 performance characteristics including formulation, safety, taste, efficacy and stability. Within
22 thirty (30) days of CAG's written request, Defendant will provide to CAG the nature and results
23 of the annual review of alternate ingredient supplies.

24 4. SETTLEMENT PAYMENT

25 4.1 Payment and Due Date: Within 10 business days of the approval of the Consent
26 Judgment, Defendants shall pay a total of Two hundred and fifteen thousand dollars and zero

1 cents (\$215,000) in full and complete settlement of all monetary claims by CAG related to the
2 Notice, as follows:

3 4.1.1 **Civil Penalty:** Defendants shall issue separate checks totaling fifty-eight
4 thousand five hundred dollars (\$58,500) as penalties pursuant to Health & Safety Code §
5 25249.12:

6 (a) Defendants will issue a check made payable to the State of California's
7 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of forty-three
8 thousand eight hundred and seventy-five dollars (\$43,875) representing 75% of the total penalty
9 and Defendants will issue a check to CAG in the amount of fourteen thousand six hundred and
10 twenty-five dollars (\$14,625) representing 25% of the total penalty; and

11 (b) Separate 1099s shall be issued for each of the above payments:
12 Defendants will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
13 0284486) in the amount of \$43,875. Defendants will also issue a 1099 to CAG in the amount of
14 \$14,625 c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills,
15 California 90212.

16 4.1.2 **Payment In Lieu of Civil Penalties:** Defendants shall pay forty-three
17 thousand five hundred dollars (\$43,500) in lieu of civil penalties to "Consumer Advocacy Group,
18 Inc." CAG will use this payment for investigation of the public's exposure to Proposition 65
19 listed chemicals through various means, including laboratory fees for testing for Proposition 65
20 listed chemicals, administrative costs and fees related to such activities, expert fees for
21 evaluating exposures through various mediums, including but not limited to consumer product,
22 occupational, and environmental exposures to Proposition 65 listed chemicals, and the cost of
23 hiring consulting and retained experts who assist with the extensive scientific analysis necessary
24 for those files in litigation, as well as administrative costs and fees related to such activities in
25 order to reduce the public's exposure to Proposition 65 listed chemicals by notifying those
26 persons and/or entities believed to be responsible for such exposures and attempting to persuade
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1 those persons and/or entities to reformulate their products or the source of exposure to
2 completely eliminate or lower the level of Proposition 65 listed chemicals, thereby addressing
3 the same public harm as allegedly in the instant Action. Further, should the court require it,
4 CAG will submit under seal, an accounting of these funds as described above as to how the funds
5 were used. The check shall be made payable to "Consumer Advocacy Group, Inc."

6 **4.1.3 Reimbursement of Attorneys Fees and Costs:** Defendants shall pay one
7 hundred and thirteen thousand dollars (\$113,000) as reimbursement for reasonable investigation
8 fees and costs, attorneys' fees, and any other costs incurred as a result of investigating, bringing
9 this matter to Defendant's attention, litigating, and negotiating a settlement in the public interest.
10 The check shall be made payable to "Yeroushalmi & Associates".

11 **4.2 Mailing of Payments:** All payments above shall be delivered via overnight mail
12 to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W,
13 Beverly Hills, CA 90212.

14 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

15 **5.1** This Consent Judgment is a full, final, and binding resolution between CAG on
16 behalf of itself and in the public interest and Defendants, of any alleged violation of Proposition
17 65 that was or could have been asserted by CAG against Defendants for failure to provide
18 Proposition 65 warnings of exposure to Lead and Cadmium from the Covered Products as set
19 forth in the Notice for the Covered Products, and fully resolves all claims that have been or could
20 have been asserted in this action up to and including the date of entry of Judgment for failure to
21 provide Proposition 65 warnings for the Covered Products regarding exposures to Lead and
22 Cadmium. CAG, on behalf of itself and in the public interest, hereby discharges Defendants and
23 its parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensors,
24 licensees, customers, distributors, wholesalers, retailers and all downstream entities in the
25 distribution chain of any of the Covered Products, and the predecessors, successors and assigns
26 of any of them, and all of their respective officers, directors, shareholders, members, managers,
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1 employees, agents (collectively, "Released Parties"), from all claims up through the Effective
2 Date for violations of Proposition 65 based on exposure to Lead and Cadmium from the Covered
3 Products. Compliance with the terms of this Consent Judgment shall be deemed to constitute
4 compliance by the Released Parties with Proposition 65 regarding alleged exposures to Lead and
5 Cadmium from the Covered Products. Nothing in this Section affects CAG's right to commence
6 or prosecute an action under Proposition 65 against any person other than Defendants or
7 Released Parties.

8 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
9 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
10 indirectly, any form of legal action and releases all claims, including, without limitation, all
11 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
12 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
13 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,
14 fixed or contingent (collectively "Claims"), against the Released Parties arising from any
15 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
16 about exposure to Lead and Cadmium from the Covered Products. In furtherance of the
17 foregoing, as to alleged exposures to Lead and Cadmium from the Covered Products, CAG on
18 behalf of itself only, hereby waives any and all rights and benefits which it now has, or in the
19 future may have, conferred upon it with respect to Claims arising from any violation of
20 Proposition 65 or any other statutory or common law regarding the failure to warn about
21 exposure to Lead and Cadmium from the Covered Products by virtue of the provisions of section
22 1542 of the California Civil Code, which provides as follows:
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24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
25 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
26 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,
MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
DEBTOR.

27 CAG understands and acknowledges that the significance and consequence of this waiver of
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1 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
2 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
3 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
4 about exposure to Lead and Cadmium from the Covered Products, including but not limited to
5 any exposure to, or failure to warn with respect to exposure to Lead and Cadmium from the
6 Covered Products, CAG will not be able to make any claim for those damages against Released
7 Parties. Furthermore, CAG acknowledges that it intends these consequences for any such
8 Claims arising from any violation of Proposition 65 or any other statutory or common law
9 regarding the failure to warn about exposure to Lead and Cadmium from Covered Products as
10 may exist as of the date of this release but which CAG does not know exist, and which, if known,
11 would materially affect their decision to enter into this Consent Judgment, regardless of whether
12 their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other
13 cause.

14 5.3 At Defendants' option, the parties may incorporate an agreed upon naturally
15 occurring level of Cadmium into the calculation under Section 3.3.3 above of determining
16 whether a Covered Product is a Cadmium Reformulated Covered Product. In which case,
17 Covered Products requiring the use of this naturally occurring level of Cadmium shall only be
18 released for Claims arising from any violation of Proposition 65 or any other statutory or
19 common law regarding the failure to warn about exposure to Lead and Cadmium from the
20 Covered Product by CAG on behalf of itself only, and not on behalf of the interest of the public.
21 Defendants shall bear all costs associated with establishing a naturally occurring level of
22 Cadmium should Defendants choose to incorporate one pursuant to this section 5.3.

23
24 **6. ENFORCEMENT OF JUDGMENT**

25 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
26 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
27 California, Los Angeles County, giving the notice required by law, enforce the terms and
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1 conditions contained herein. A Party may enforce any of the terms and conditions of this
2 Consent Judgment only after that Party first provides 90 days notice to the Party allegedly failing
3 to comply with the terms and conditions of this Consent Judgment and attempts to resolve such
4 Party's failure to comply in an open and good faith manner.

5 **6.2 Notice of Violation.** Prior to bringing any motion, order to show cause, or other
6 proceeding to enforce the terms of this Consent Judgment, CAG shall provide a Notice of
7 Violation ("NOV") to Defendants. The NOV shall include for each of the Covered Products: the
8 date(s) the alleged violation(s) was observed and the location at which the Covered Products
9 were offered for sale, and shall be accompanied by all test data obtained by CAG regarding the
10 Covered Products, including an identification of the component(s) of the Covered Products that
11 were tested.

12 **6.2.1 Non-Contested NOV.** CAG shall take no further action regarding the
13 alleged violation if, within 60 days of receiving such NOV, Defendants serves a Notice of
14 Election ("NOE") that meets one of the following conditions:

15 (a) The Covered Products were shipped by Defendants for sale in
16 California before the Effective Date, or

17 (b) Since receiving the NOV Defendants have taken corrective action
18 by either (i) requesting that its customers or stores in California, as applicable, remove
19 the Covered Products identified in the NOV from sale in California and destroy or return
20 the Covered Products to Defendants or vendor, as applicable, or (ii) providing a clear and
21 reasonable warning for the Covered Products identified in the NOV pursuant to 27 Cal.
22 Code Regs. § 25603.

23 (c) Provide CAG with testing information, from an independent third-
24 party laboratory meeting the requirements of Sections 3.4.2 and 3.4.3, demonstrating
25 Defendant's compliance with the Consent Judgment, if warranted.
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1 6.2.2 **Contested NOV.** Defendants may serve an NOV informing CAG of its
2 election to contest the NOV within 30 days of receiving the NOV.

3 (a) In its election, Defendants may request that the sample(s) Covered
4 Products tested by CAG be subject to confirmatory testing at an EPA-accredited
5 laboratory.

6 (b) If the confirmatory testing establishes that the Covered Products do
7 not contain Lead and Cadmium in excess of the levels allowed in Section 3, above, CAG
8 shall take no further action regarding the alleged violation. If the testing does not
9 establish compliance with Section 3, above, Defendants may withdraw its NOE to contest
10 the violation and may serve a new NOE pursuant to Section 6.2.1.

11 (c) If Defendants do not withdraw an NOE to contest the NOV, the
12 Parties shall meet and confer for a period of no less than 30 days before CAG may seek
13 an order enforcing the terms of this Consent Judgment.

14 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the
15 prevailing party shall be entitled to its attorneys' fees.

16 **7. ENTRY OF CONSENT JUDGMENT**

17 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
18 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG,
19 Defendants waive their respective rights to a hearing or trial on the allegations of the Complaint.
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21 7.2 If this Consent Judgment is not approved in full by the Court, (a) this Consent
22 Judgment and any and all prior agreements between the parties merged herein shall terminate
23 and become null and void, and the actions shall revert to the status that existed prior to the
24 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
25 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
26 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any

1 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
2 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

3 **8. MODIFICATION OF JUDGMENT**

4 8.1 This Consent Judgment may be modified only upon written agreement of the
5 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
6 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

7 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
8 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

9 **9. RETENTION OF JURISDICTION**

10 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
11 terms of this Consent Judgment under Code of Civil Procedure § 664.6.

12 **10. DUTIES LIMITED TO CALIFORNIA**

13 10.1 This Consent Judgment shall have no effect on Covered Products sold by
14 Defendants outside the State of California.

15 **11. SERVICE ON THE ATTORNEY GENERAL**

16 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
17 California Attorney General so that the Attorney General may review this Consent Judgment
18 prior to its submittal to the Court for approval. No sooner than forty-five (45) days after the
19 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
20 absence of any written objection by the Attorney General to the terms of this Consent Judgment,
21 the parties may then submit it to the Court for approval.

22 **12. ATTORNEY FEES**

23 12.1 Except as specifically provided in Section 4.1.3 and 6.3, each Party shall bear its
24 own costs and attorney fees in connection with this action.
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1 **13. ENTIRE AGREEMENT**

2 13.1 This Consent Judgment contains the sole and entire agreement and understanding
3 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
4 negotiations, commitments and understandings related hereto. No representations, oral or
5 otherwise, express or implied, other than those contained herein have been made by any party
6 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
7 deemed to exist or to bind any of the Parties.

8 **14. GOVERNING LAW**

9 14.1 The validity, construction and performance of this Consent Judgment shall be
10 governed by the laws of the State of California, without reference to any conflicts of law
11 provisions of California law.

12 14.2 The terms of this Consent Judgment shall be governed by the laws of the State of
13 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
14 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
15 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
16 rendered inapplicable by reason of law generally as to the Covered Products, then any Defendant
17 subject to this Consent Judgment may provide written notice to CAG of any asserted change in
18 the law, and shall have no further obligations pursuant to this Consent Judgment with respect to,
19 and to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment
20 shall be interpreted to relieve a Defendant from any obligation to comply with any pertinent state
21 or federal law or regulation.

22 14.3 The Parties, including their counsel, have participated in the preparation of this
23 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
24 Consent Judgment was subject to revision and modification by the Parties and has been accepted
25 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
26 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
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1 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
2 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
3 resolved against the drafting Party should not be employed in the interpretation of this Consent
4 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

5 **15. EXECUTION AND COUNTERPARTS**

6 15.1 This Consent Judgment may be executed in counterparts and by means of
7 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
8 one document and have the same force and effect as original signatures.

9 **16. NOTICES**

10 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
11 Class Mail.

12
13 If to CAG:

14 Reuben Yeroushalmi
15 Yeroushalmi & Yeroushalmi
16 9100 Wilshire Boulevard, Suite 240W
Beverly Hills, CA 90212

17
18 If to COLOMBINA USA, INC. and COLOMBINA DE PUERTO RICO, LLC:

19 Jacobo Tovar
20 COLOMBINA USA
21 5200 Blue Lagoon Drive Suite 220
Miami, FL 33126

22 With a copy to:


23 George Gigounas
24 DLA Piper LLP (US)
25 555 Mission Street, Suite 2400
San Francisco, California 94105-2933

17. AUTHORITY TO STIPULATE

17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party represented and legally to bind that party.

AGREED TO:

Date: 09/30/16, 2016



Name: Michael Marcus

Title: Director
CONSUMER ADVOCACY GROUP,
INC.

AGREED TO:

Date: 9/30/2016, 2016



Name: Carlos Gil

Title: General Manager
COLOMBINA USA, INC.

AGREED TO:

Date: 9/30/2016, 2016



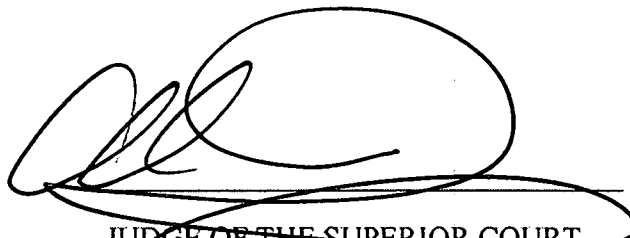
Name: Carlos Gil

Title: VP
COLOMBINA DE PUERTO RICO, LLC

IT IS SO ORDERED.

DEC 14 2016

Date: _____


JUDGE OF THE SUPERIOR COURT
MICHAEL LINFIELD