

FILED
Superior Court of California
County of Los Angeles

JAN 13 2020

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By Mariela Fregoso Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL CIVIL WEST

Coordination Proceeding
Special Title (Rule 3.550)

PROPOSITION 65
RICE PRODUCT CASES

This Document Relates To:

CONSUMER ADVOCACY GROUP, INC., in
the public interest,

Plaintiff,

v.

UKA'S BIG SAVER FOODS, INC., dba BIG
SAVER FOODS, INC., a California
Corporation; OTIS MCALLISTER, INC., a
California Corporation; and DOES 1-20;

Defendants.

JUDICIAL COUNCIL
COORDINATION PROCEEDING NO. 4816
In Los Angeles Case No.: BC553852

Coordinated with: 34-2014-00165277,
BC549137, BC549139, BC554810, BC553427,
BC556594, CGC-13-536301, and BC571487

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

[Assigned For All Purposes to Hon. Elihu M.
Berle in Dept. 323]

Complaint in BC553852 filed: August 6, 2014

1. INTRODUCTION

1.1 This Consent Judgment is entered into by and between Plaintiff, CONSUMER
ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") acting on behalf of itself and in the interest of the
public, and Defendant, OTIS MCALLISTER, INC., ("OTIS" or "Defendant"), with each a Party to the

1 action and collectively referred to as "Parties."

2 **1.2 Defendant and Covered Products**

3 1.2.1 CAG alleges that OTIS is a California Corporation which employs ten or more
4 persons. For purposes of this Consent Judgment only, OTIS is deemed a person in the course of doing
5 business in California and subject to the provisions of the Safe Drinking Water and Toxic Enforcement
6 Act of 1986, California Health & Safety Code §§ 25249.6 et seq. ("Proposition 65").

7 1.2.2 CAG alleges that OTIS manufactures, causes to be manufactured, sells, or
8 distributes rice in California.

9 **1.3 Listed Chemical**

10 1.3.1 Lead and lead compounds have been listed by the State of California as known
11 to cause cancer and/or birth defects or other reproductive harm.

12 **1.4 Notice of Violation.**

13 1.4.1 On or about February 18, 2014, CAG served OTIS and UKA's Big Saver
14 Foods, Inc. [dba Big Saver Foods, Inc.], and various public enforcement agencies with a document,
15 dated February 17, 2014, titled "60-Day Notice of Intent to Sue for Violation of the Safe Drinking
16 Water and Toxic Enforcement Act of 1986" ("February 18, 2014 Notice") that provided the recipients
17 with notice of alleged violations of Health & Safety Code § 25249.6 for allegedly failing to warn
18 individuals in California of exposure to lead contained in certain rice currently known as: Super Lucky
19 Elephant Jasmine White Naturally Scented Rice, "Jasmine Long Grain Fragrant Rice", "Thai Hom
20 Mali Rice", "Net Wt. 2 Lbs (.9072 kg)", "Product of Thailand" barcode: 0 28571 00409 8, sold by
21 OTIS in California. No public enforcer has commenced or diligently prosecuted the allegations set
22 forth in the February 18, 2014 Notice.

23 1.4.2 On or about November 3, 2014, CAG served OTIS, Unified Grocers, Inc., and
24 UKA's Big Saver Foods, Inc. [dba Big Saver Foods, Inc.], and various public enforcement agencies
25 with a document, dated October 31, 2014, titled "60-Day Notice of Intent to Sue for Violation of the
26 Safe Drinking Water and Toxic Enforcement Act of 1986" ("November 3, 2014 Notice") that provided
27 the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for allegedly failing
28 to warn individuals in California of exposures to lead contained in certain rice sold by OTIS in

1 California known as Super Lucky Elephant Jasmine White Naturally Scented Rice. "Jasmine Long
2 Grain Fragrant Rice", "Thai Hom Mali Rice", "Net Wt. 2 Lbs (.9072 kg)", "Product of Thailand"
3 barcode: 0 28571 00409 8. No public enforcer has commenced or diligently prosecuted the allegations
4 set forth in the November 3, 2014 Notice.

5 **1.5 Complaint and Answer.**

6 On August 6, 2014, CAG filed a Complaint against Defendant, and UKA's Big Saver Foods.
7 Inc. dba Big Saver Foods, Inc. for civil penalties and injunctive relief (the "Complaint") in Los
8 Angeles County Superior Court, Case No. BC553852, alleging that Defendants violated Proposition
9 65 for allegedly failing to give clear and reasonable warnings of alleged exposure to Lead in certain
10 rice named above in Section 1.4.1 that Defendants distributed and/or sold in California.

11 On September 17, 2014 OTIS filed its general denial under CCP § 431.30(d) to the Complaint
12 and setting forth various affirmative defenses. It is OTIS' position that it has never been in violation
13 of the warning requirements of Proposition 65 for lead. OTIS therefore reiterates its general denial
14 herein. Furthermore, OTIS will continue to maintain a proactive food safety and testing protocol for
15 rice and grains. OTIS has for many years maintained a proactive food safety testing provisions that
16 predate the Complaint. OTIS denies any wrongdoing in this regard.

17 **1.6 Consent to Jurisdiction**

18 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, personal jurisdiction over
20 Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Los Angeles,
21 and that this Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution of
22 the allegations against the Defendant contained in the Complaint, and of all claims which were or
23 could have been raised by any person or entity based in whole or in part, directly or indirectly, on the
24 facts alleged therein or arising therefrom or related thereto.

25 **1.7 No Admission**

26 This Consent Judgment resolves claims that are denied and disputed. The Parties enter into
27 this Consent Judgment pursuant to a full and final settlement of any and all claims between the Parties
28 for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment shall be construed

1 as an admission by the Parties of any material allegation in the Notices of Violation (see, Sections
2 1.4.1 and 1.4.2 herein), or the Complaint, or of any fact, conclusion of law, issue of law or violation of
3 law of any kind, including without limitation, any admission concerning any alleged or actual
4 violation of Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine,
5 including but not limited to the meaning of the terms "knowingly and intentionally expose" or "clear
6 and reasonable warning" as used in Health and Safety Code section 25249.6. Nothing in this Consent
7 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by the
8 Parties of any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or
9 liability by any Defendant, its officers, directors, employees, shareholders, or parent, subsidiary or
10 affiliated corporations, or be offered or admitted as evidence in any administrative or judicial
11 proceeding or litigation in any court, agency, or forum. Furthermore, nothing in this Consent
12 Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the Parties may
13 have in any other or future legal proceeding, except as expressly provided in this Consent Judgment.

14 **2. DEFINITIONS**

15 2.1 "Covered Products" means raw uncooked whole rice sold or supplied only by OTIS, or
16 sold by OTIS vendors or retailers as described further in Section 5.1 of this Consent Judgment, only
17 for those raw uncooked whole rice sold or supplied by OTIS. Covered Products shall also be
18 construed to include OTIS Private label brands and to OTIS brand names, or trademark names
19 including, but not limited to: Akiyama, Angelita, Emerald River, Himalayan Pride, Sierra, Super
20 Lucky Elephant, Village Harvest, Earthly Grains, Simply Nature, West Creek, Roma, Asian Pride,
21 Rykoff, Sahar, Jade Mountain, Arrezzo, Simply Balanced, Tierra Latina and Kirkland Signature. In
22 the event that a new private label brand is created which meets this definition of Covered Products
23 (e.g. raw uncooked whole rice sold or supplied only by OTIS), OTIS will notify CAG of this
24 development for this new private label brand to be covered herein.

25 2.2 "Effective Date" means the date that this Consent Judgment is approved by the Court.

26 2.3 "Lead" means lead and lead compounds.

27 2.4 "Listed Chemical" means Lead.

28 2.6 "Notices" means Plaintiff's February 18, 2014 and November 3, 2014 Notices.

1 **3. INJUNCTIVE RELIEF & CLEAR AND REASONABLE WARNINGS.**

2 3.1 After the Effective Date, Defendant shall not sell in California, offer for sale in
3 California, or ship into California for sale any Covered Products unless the concentration level of the
4 Listed Chemical does not exceed 56 parts per billion ("ppb"). For any Covered Products that exceed
5 56 ppb for the Listed Chemical that are sold as set forth above after the Effective Date, Defendant
6 must provide a Proposition 65 compliant warning for the Covered Products as set forth below.
7 Nothing is intended herein to provide for a permanent warning on OTIS' Covered Products if a non-
8 compliant covered product is thereafter brought into compliance as agreed to herein (e.g. Defendant
9 may address non-compliance by removing/recalling any lot that is determined through the procedures
10 set forth herein to not comply with the 56 ppb concentration level for lead).

11 Any warning provided pursuant to this section shall be affixed to the packaging of, or directly
12 on, the Covered Products, and be prominently placed with such conspicuousness as compared with
13 other words, statements, designs, or devices as to render it likely to be read and understood by an
14 ordinary individual under customary conditions before purchase or use. Any warning on the
15 packaging or label must be set off from other surrounding information and enclosed in a box. Where a
16 Covered Product's packaging or label used to provide a warning includes Consumer Information in a
17 language other than English, the warning must also be provided in that language in addition to
18 English. "Consumer Information" includes warnings, directions for use, ingredient lists, and
19 nutritional information. "Consumer Information" does not include the brand name, product name,
20 company name, location of manufacture, or product advertising. The Parties agree that the following
21 warning language shall constitute compliance with Proposition 65 with respect to the alleged Listed
22 Chemical in the Covered Products distributed and/or sold by the Defendant after the Effective Date:

23 **WARNING:** Consuming this product can expose you to chemicals including Lead, which is
24 known to the State of California to cause cancer and birth defects or other reproductive harm.
25 For more information go to www.P65Warnings.ca.gov/food.

26 **3.2 Testing and Quality Control Methodology**

27 3.2.1 All testing pursuant to this Consent Judgment, by any party, shall be performed
28 according to proper and accepted scientific and statistical analysis for each type of rice: sold by OTIS

1 in California, offered by OTIS for sale in California, or which form the constituents of any Covered
2 Product(s) sold in California. The testing shall be performed by a laboratory approved for testing food
3 intended for human consumption employing methodology that complies with the performance and
4 quality control factors appropriate therefor. The methodology is intended to ensure that any resulting
5 test reports and analysis properly account for and eliminate the possibility of false positives or
6 sampling error. Furthermore, OTIS may, in its discretion, utilize, any testing method that meets the
7 above criteria.

8 3.2.2 All testing pursuant to this Consent Judgment, by any party, shall be performed
9 by an independent third-party laboratory certified by the California Environmental Laboratory
10 Accreditation Program for the analysis of heavy metals; or an independent third-party laboratory that
11 is registered with the United States Food & Drug Administration ("FDA") for the analysis of heavy
12 metals; and/or that uses methods that are in compliance with FDA regulations for the analysis of heavy
13 metals. Defendant may perform this testing itself or with a third party laboratory if it provides, in an
14 attachment to the test results Defendant provides to CAG, proof that its laboratory meets the
15 requirements in Section 3.2.1 and this Section 3.2.2. Nothing in this Consent Judgment shall limit
16 Defendant's ability to conduct, or require that others conduct, additional testing of each type of rice
17 sold by OTIS which form the constituents of the Covered Products, including the raw materials used in
18 their manufacture.

19 3.2.3 Within three (3) months following the Effective Date, Defendant will arrange
20 for testing of at least two (2) randomly selected samples of each type of rice sold by OTIS which form
21 the constituents of the Covered Products for compliance with the standards set forth in this Consent
22 Judgment. Each type of rice sold by OTIS which form the constituents of the Covered Products shall
23 be tested pursuant to this section bi-annually after the Effective Date. Each type of rice sold by OTIS
24 which form the constituents of the Covered Products shall be tested in the form (e.g. cooked/uncooked
25 rice) intended for sale to the end-user to be distributed or sold to California. The testing requirements
26 discussed in Sections 3.2.1 and 3.2.2 are not applicable to any type of rice sold by OTIS which form
27 the constituents of the Covered Products for which Defendant has provided the warning as specified in
28 Section 3.1.

1 3.2.4 All parties shall retain the laboratory test data and certifications (if applicable)
2 for a period of three (3) years from the date of testing. If there is an allegation that a particular
3 Covered Product is in violation of Section 3.1, CAG may make a written request to Defendant
4 delivered to the address of Defendant as set forth in Section 15, for data generated in compliance with
5 Section 3.2.4 concerning the particular Covered Product and shall, concurrently with its written
6 request, provide Defendant with the testing data that supports the allegation. In response, within thirty
7 (30) days of CAG's written request and provision of its testing data to Defendant, Defendant will
8 provide to CAG the date Defendant's analysis was performed concerning the particular Covered
9 Product identified by CAG in its request, the name of the laboratory conducting the test, the test
10 method used by the laboratory, the detection limit used by the laboratory, and the analytical results
11 concerning the particular Covered Product identified by CAG in its request.

12 **4. SETTLEMENT PAYMENT**

13 4.1 **Payment and Due Date:** Within 10 days of the Effective Date, Defendant shall pay a
14 total of one hundred and fifty thousand dollars and zero cents (\$150,000.00) in full and complete
15 settlement of any and all claims for civil penalties, damages, attorney's fees, expert fees or any other
16 claim for costs, expenses or monetary relief of any kind for claims that were or could have been
17 asserted in the Notice or Complaint, as separated into partial payment as follows:

18 4.1.1 **Civil Penalty:** Defendant shall issue two separate checks totaling five thousand
19 seven hundred and twenty dollars (\$5,720.00) as follows for alleged civil penalties pursuant to Health
20 & Safety Code § 25249.12:

21 (a) Defendant will issue one check made payable to the State of California's
22 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of four thousand two
23 hundred and ninety dollars (\$4,290.00) representing 75% of the total civil penalty and Defendant will
24 issue a second check to CAG in the amount of one thousand four hundred and thirty dollars (\$1,430)
25 representing 25% of the total civil penalty:

26 (b) Separate 1099s shall be issued for each of the above payments: Defendant
27 will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the
28 amount of \$4,290.00. Defendant will also issue a 1099 to CAG in the amount of \$1,430.00 and

1 deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly
2 Hills, California 90212.

3 **4.1.2 Additional Settlement Payments:** Defendant shall pay four thousand two
4 hundred and eighty dollars (\$4,280.00) as additional settlement payments to "Consumer Advocacy
5 Group, Inc." pursuant to Health & Safety Code § 25249.7(b) and California Code of Regulations, Title
6 11 § 3203(d). CAG will use this payment as follows, seventy percent (70%) for fees of investigation,
7 purchasing and testing for Proposition 65 listed chemicals in various products, and for expert fees for
8 evaluating exposures through various mediums, including but not limited to consumer product,
9 occupational, and environmental exposures to Proposition 65 listed chemicals, and the cost of hiring
10 consulting and retaining experts who assist with the extensive scientific analysis necessary for those
11 files in litigation; twenty percent (20%) for administrative costs incurred during investigation and
12 litigation to reduce the public's exposure to Proposition 65 listed chemicals by notifying those persons
13 and/or entities believed to be responsible for such exposures and attempting to persuade those persons
14 and/or entities to reformulate their products or the source of exposure to completely eliminate or lower
15 the level of Proposition 65 listed chemicals including but not limited to costs of documentation and
16 tracking of products investigated, storage of products, website enhancement and maintenance,
17 computer and software maintenance, investigative equipment, CAG's member's time for work done
18 on investigations, office supplies, mailing supplies and postage; and ten percent (10%) to offset the
19 costs of future litigation enforcing Proposition 65 but excluding attorney fees, thereby addressing the
20 same public harm as allegedly in the instant Action. Within 30 days of a request from the Attorney
21 General, CAG shall provide to the Attorney General copies of documentation demonstrating how the
22 above funds have been spent.

23 **4.1.3 Reimbursement of Attorney Fees and Costs:** Defendant shall pay one
24 hundred and forty thousand dollars (\$140,000.00) payable to "Yeroushalmi & Yeroushalmi" as
25 complete reimbursement for any and all reasonable investigation fees and costs, attorneys' fees, expert
26 fees, and any and all other costs and expenses incurred as a result of investigating, bringing this matter
27 to the Defendant's attention, litigating, negotiating a settlement in the public interest, and seeking and
28 obtaining court approval of this Consent Judgment.

1 4.2 Other than the payment to OEHHA described above, all payments referenced in
2 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi, Yeroushalmi &
3 Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The payment to OEHHA
4 shall be delivered directly to Office of Environmental Health Hazard Assessment, Attn: Mike Gyurics,
5 1001 J Street, Mail Stop 12-B, Sacramento, California 95812. Defendant shall provide written
6 confirmation to CAG upon payment to OEHHA.

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

8 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on behalf
9 of itself and in the public interest, and Defendant and its officers, directors, insurers, employees,
10 parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister companies,
11 attorneys, experts, and their successors and assigns ("Defendant Releasees"), and all entities to whom
12 Defendant directly or indirectly distribute or sell Covered Products, including, but not limited to,
13 downstream distributors, wholesalers, vendors, customers, retailers, franchisees, cooperative members,
14 licensees, and the successors and assigns of any of them, including but not limited to UKA's Big Saver
15 Foods, Inc., UKA's Big Saver Foods, Inc. dba Big Saver Foods, Inc., and to Unified Grocers, Inc.,
16 who may use, maintain, distribute or sell Covered Products ("Downstream Defendant Releasees"), of
17 all claims for alleged or actual violations of Proposition 65 for alleged exposures to the Listed
18 Chemical from the Covered Products manufactured, distributed, packaged, or sold by Defendant,
19 Defendant Releasees, and/or Downstream Defendant Releasees, up through the Effective Date of this
20 Consent Judgment, and inclusive of the Notices and Complaint. Defendant, Defendant Releasees, an
21 Downstream Defendant Releasees' compliance with this Consent Judgment shall constitute
22 compliance with Proposition 65 with respect to alleged exposures to the Listed Chemical from the
23 Covered Products sold by Defendant, Defendant Releasees and/or Downstream Defendant Releasees
24 individually and/or collectively after the Effective Date. Nothing in this Section affects CAG's right
25 to commence or prosecute an action under Proposition 65 against any person other than Defendant,
26 Defendant Releasees, or Downstream Defendant Releasees. Defendant, Defendant Releasees and
27 Downstream Defendant Releasees are hereafter individually and/or collectively referred to as the
28 "Released Parties".

1 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
2 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
3 indirectly, any form of legal or administrative action and releases all claims, including, without
4 limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
5 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees,
6 expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
7 contingent (collectively "Claims"), against the Released Parties arising from any actual or alleged
8 violation of Proposition 65 or any other statutory or common law claim regarding the Covered
9 Products manufactured, packaged, distributed or sold by the Released Parties through the Effective
10 Date regarding any actions or inaction by the Released Parties whatsoever relating to the Covered
11 Products regarding any actual or alleged failure to warn about exposure to the Listed Chemical from
12 the Covered Products. In furtherance of the foregoing, CAG on behalf of itself and its officers,
13 directors, insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners,
14 affiliates, sister entities, successors in interest, attorneys, and all of their successors and assigns ("CAG
15 Releasees"), hereby waives any and all rights and benefits which they now have, or in the future may
16 have, conferred upon them with respect to Claims regarding the Covered Products manufactured,
17 packaged, distributed or sold by the Released Parties through the Effective Date arising from any
18 violation of Proposition 65 or any other statutory or common law violation whatsoever relating to the
19 Covered Products regarding claims arising from the failure to warn about exposure to the Listed
20 Chemical from the Covered Products by virtue of the provisions of section 1542 of the California Civil
21 Code, which provides as follows:

22
23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
24 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
25 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
26 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
27 WITH THE DEBTOR.
28

1 CAG Releasees understand and acknowledge that the significance and consequence of this waiver of
2 California Civil Code section 1542 is that even if the CAG Releasees suffer future damages arising out
3 of or resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
4 violation of Proposition 65 or any other statutory or common law regarding the Covered Products
5 manufactured, packaged, distributed or sold by the Released Parties through the Effective Date
6 regarding the failure to warn about actual or alleged exposure to the Listed Chemical from the
7 Covered Products, CAG Releasees will not be able to make any claim for those damages, penalties or
8 other relief against the Released Parties. Furthermore, CAG Releasees acknowledge that they intend
9 these consequences for any such Claims arising from any violation of Proposition 65 or any other
10 statutory or common law regarding the failure to warn about exposure to the Listed Chemical from the
11 Covered Products as may exist as of the Effective Date of this release but which the CAG Releasees
12 do not know exist, and which, if known, would materially affect their decision to enter into this
13 Consent Judgment, regardless of whether their lack of knowledge is the result of ignorance, oversight,
14 error, negligence, or any other cause.

15 **6. ENFORCEMENT OF JUDGMENT**

16 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties hereto.
17 The Parties may, by noticed motion or order to show cause before the Superior Court of California,
18 Los Angeles County, enforce the terms and conditions contained herein. A Party may enforce any of
19 the terms and conditions of this Consent Judgment only after that Party first provides 90 days written
20 notice to the Party allegedly failing to comply with the terms and conditions of this Consent Judgment,
21 and attempts to resolve such Party's failure to comply in an open and good faith manner.

22 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
23 proceeding to enforce the terms of this Consent Judgment, CAG shall provide a Notice of Violation
24 ("NOV") to Defendant. The NOV shall include for each of the Covered Products: (a) the name of the
25 Covered Products; (b) specific dates, name, barcode and lot number when the Covered Product was
26 sold in California; (c) the store or other place at which the Covered Product was available for sale to
27 consumers; (d) any other evidence or support for the allegations in the NOV which must include
28 copies of complete CAG test results forming the basis for the NOV including, the testing laboratory.

1 testing method utilized and all analytical results; (e) CAG shall not initiate an NOV without one
2 sample of a Covered Product exceeding 56 ppb lead; and (f) in association with any NOV, CAG shall
3 provide split samples of the tested product to OTIS for its own testing together with a copy or copies
4 of the packaging from which the Covered Product was sampled showing the packaging's barcode, and
5 the sprayed inkjet writing on the packaging clearly showing the lot number, the listed reference
6 number, and the expiration date.

7 **6.2.1 Response to NOV.**

8 (a) CAG shall take no further action of any kind regarding the alleged violation if,
9 within 90 days of receiving such NOV, Defendant:

10 (1) Serves a Notice of Election ("NOE") not to contest the NOV that meets one
11 of the following conditions:

12 (i) A statement that the Covered Product was produced or shipped
13 by Defendant for sale in California before the Effective Date; or

14 (ii) A statement that since receiving the NOV Defendant has taken
15 corrective action by either: (i) taking all steps necessary to bring the sale of the
16 product into compliance under the terms of this Consent Judgment; or (ii)
17 requesting that its customers or stores in California, as applicable, remove the
18 Covered Product identified in the NOV from sale in California and destroy or
19 return the Covered Product to Defendant or vendor, as applicable; or

20 (2) Refutes the information provided in the NOV (e.g. with the results of testing
21 provided for herein, including Section 3.2 above) that reflect compliance. CAG shall
22 provide Notice of its Acceptance ("NOA") or Notice of Rejection ("NOR") of
23 Defendant's refutation within 30 days of the date such refutation data is provided to
24 CAG by Defendant.

25 **6.2.2 Contested NOV.** Within 60 days following CAG's NOR or 90 days following
26 the NOV, whichever is later Defendant may serve a Notice of Election ("NOE") informing
27 CAG of its election to contest the NOV.

28 (a) In its election, Defendant may request that the sample(s) of Covered

1 Product tested by CAG be subject to confirmatory testing at an independent third-party
2 laboratory certified by the California Environmental Laboratory Accreditation Program for the
3 analysis of heavy metals; or an independent third-party laboratory that is registered with the
4 United States Food & Drug Administration ("FDA") for the analysis of heavy metals; and/or
5 that uses methods that are in compliance with FDA regulations for the analysis of heavy
6 metals.

7 (b) If the confirmatory testing establishes that the Covered Products do not
8 contain the Listed Chemicals in excess of the levels allowed in Section 3.1. above, CAG shall
9 take no further action regarding the alleged violation. If the testing does not establish
10 compliance with Section 3.1. above, Defendant may withdraw its NOE to contest the violation
11 and may serve a new NOE pursuant to Section 6.2.1(a)(1).

12 (c) If Defendant does not withdraw a NOE to contest the NOV, the Parties
13 shall meet and confer for a period of no less than 60 days before CAG may seek an order
14 enforcing the terms of this Consent Judgment.

15 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the
16 prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

17 **7. ENTRY OF CONSENT JUDGMENT**

18 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
19 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
20 Defendant waive their respective rights to a hearing and trial on the allegations in the Notices,
21 Complaint and Coordination Proceeding stated in the caption above.

22 7.2 If this Consent Judgment is not approved in full by the Court: (a) the Parties agree to
23 meet and confer to determine whether to modify the terms of the Consent Judgment and to resubmit it
24 for approval; or (b) this Consent Judgment and any and all prior agreements between the Parties
25 merged herein shall terminate and become null and void, and the actions shall revert to the status that
26 existed prior to the execution date of this Consent Judgment except that the Parties shall petition the
27 Court for a new trial date and new trial date deadlines; and (c) no term of this Consent Judgment or
28 any draft thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement

1 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose
2 in this Action, or in any other proceeding.

3 7.3 CAG shall file a request for a dismissal without prejudice as to defendant, UKA's Big
4 Saver Foods, Inc., dba Big Saver Foods, Inc. in Case No. BC553852 and Coordination Proceeding No.
5 4816 within ten (10) days of the Effective Date.

6 7 **8. MODIFICATION OF JUDGMENT**

8 8.1 This Consent Judgment may be modified only upon written agreement of the Parties
9 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any Party as
10 provided by law and upon entry of a modified Consent Judgment by the Court.

11 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet
12 and confer with the other Party prior to filing a motion to modify the Consent Judgment.

13 **9. RETENTION OF JURISDICTION**

14 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms of
15 this Consent Judgment under Code of Civil Procedure § 664.6.

16 **10. SERVICE ON THE ATTORNEY GENERAL**

17 10.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
18 California Attorney General so that the Attorney General may review this Consent Judgment prior to
19 its submittal to the Court for approval. No sooner than forty five (45) days after the Attorney General
20 has received the aforementioned copy of this Consent Judgment, CAG may then submit it to the Court
21 for approval.

22 **11. ATTORNEY FEES**

23 11.1 Except as specifically provided in Sections 4.1.3, and 6.3, each Party shall bear its own
24 attorneys' fees, costs and expert fees in connection with the claims resolved in this Consent Judgment.

25 **12. ENTIRE AGREEMENT**

26 12.1 This Consent Judgment contains the sole and entire agreement and understanding of the
27 Parties with respect to the entire subject matter hereof and any and all prior discussions, negotiations,
28 commitments and understandings related hereto. No representations, oral or otherwise, express or

1 implied, other than those contained herein have been made by any party hereto. No other agreements
2 not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the
3 Parties.

4 **13. GOVERNING LAW**

5 13.1 The validity, construction and performance of this Consent Judgment shall be governed
6 by the laws of the State of California, without reference to any conflicts of law provisions of
7 California law.

8 13.2 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
9 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
10 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
11 rendered inapplicable by reason of law generally as to the Covered Products, then Defendant may
12 provide written notice to CAG of any asserted change in the law, and shall have no further obligations
13 pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so
14 affected. Nothing in this Consent Judgment shall be interpreted to relieve Defendant from any
15 obligation to comply with any other pertinent state or federal law or regulation.

16 13.3 The Parties, including their counsel, have participated in the preparation of this Consent
17 Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This Consent
18 Judgment was subject to revision and modification by the Parties and has been accepted and approved
19 as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing
20 in this Consent Judgment shall not be interpreted against any Party as a result of the manner of the
21 preparation of this Consent Judgment. Each Party to this Consent Judgment agrees that any statute or
22 rule of construction providing that ambiguities are to be resolved against the drafting Party should not
23 be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby
24 waive California Civil Code § 1654.

25 **14. EXECUTION AND COUNTERPARTS**

26 14.1 This Consent Judgment may be executed in counterparts and by means of facsimile or
27 portable document format (pdf), which taken together shall be deemed to constitute one document and
28 have the same force and effect as original signatures.

APPROVED AS TO FORM:

Date: Jan. 10, ~~2019~~ 2020

 1/10/20
P.T.S.

Name: Peter T. Sato

Title: Attorney

Reuben Yeroushalmi

Peter T. Sato

YEROUSHALMI & YEROUSHALMI

An Association of Independent Law Corporations

9100 Wilshire Boulevard, Suite 240W

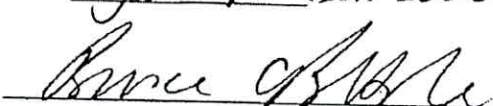
Beverly Hills, 90212

Attorneys for Plaintiffs.

Consumer Advocacy Group, Inc.

APPROVED AS TO FORM:

Date: Jan. 9, ~~2019~~ 2020

 1/10/20
P.T.S. w/ auth.

Name: Bruce C. Paltenghi

Title: Attorney

Richard T. Bowles

Bruce C. Paltenghi

Lawrence D. Goldberg

Bowles & Verna, LLP

2121 N. California Blvd., Suite 875

Walnut Creek, CA 94596

Attorneys for Defendant

Otis McAllister, Inc.

IT IS SO ORDERED.

Date: Jan 13, 2020



JUDGE OF THE SUPERIOR COURT