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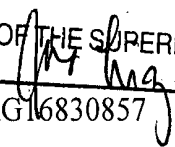
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA
1221 OAK STREET
OAKLAND, CA. 94612

FILED
ALAMEDA COUNTY

NOV 10 2016

CLERK OF THE SUPERIOR COURT

By:  Deputy
Case No. RG16830857

As You Sow,
Plaintiff,

vs.

Mishima Foods USA, Inc.
Defendant.

**NOTICE OF ENTRY OF
JUDGMENT**


Department 19

Honorable Judge Julia Spain

TO ALL PARTIES AND COUNSEL OF RECORD:

Pursuant to CCP 664.5 notice is hereby given that on **November 10, 2016**, the Court entered a **Consent Judgment** in the above referenced case. A true and correct copy of said **Consent Judgment** is attached hereto and incorporated herein by reference.

Dated: **November 10, 2016**

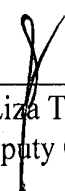

Clerk of the Superior Court

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served the **NOTICE OF ENTRY OF JUDGMENT** by placing copies in envelopes addressed as shown above and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Chad Finke Executive Officer/Clerk of the Superior Court

Dated: **November 10, 2016**

By 
Ana Liza Tumonong
Deputy Clerk

FILED
ALAMEDA COUNTY

NOV 10 2016

CLERK OF THE SUPERIOR COURT

B. [Signature] Deputy

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12 Attorneys for Defendant Mishima Foods U.S.A. Inc.

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

17 AS YOU SOW,

18 Plaintiff,

19 v.

20 MISHIMA FOODS U.S.A. INC.

21 Defendant.

Case No. 2016 830 857

~~PROPOSED~~ CONSENT JUDGMENT

Civil case

22 This Consent Judgment is entered into by and between Plaintiff As You Sow ("AYS" or
23 "Plaintiff") and Defendant Mishima Foods U.S.A. Inc. ("Mishima" or "Defendant"), to resolve
24 claims raised against the Defendant in the Plaintiff's Complaint in the above-captioned action,
25 which was filed on Sept. 13, 2016. This Consent Judgment shall be effective upon entry.
26 AYS and the Defendant (collectively "the Parties") agree to the terms and conditions set forth
27 below.
28

1 **INTRODUCTION**

2 1.1 AYS is a non-profit corporation dedicated to, among other causes, the protection of
3 the environment, the promotion of human health, the improvement of worker and consumer rights,
4 environmental education, and corporate accountability. AYS is based in Oakland, California and
5 is incorporated under the laws of the State of California.

6 1.2 The Defendant produces, distributes, and/or sells Soft & Crunchy Brown Rice
7 Cracker Seaweed Roll, formerly called Seaweed Roll Soft & Crunchy Brown Rice Cracker (the
8 "Covered Product"). The Covered Product is described on Mishima's website as a rice cracker
9 wrapped in seaweed that is a "fat free and gluten free vegetarian snack."

10 1.3 AYS alleges in the Complaint that the Covered Product contains cadmium and
11 lead, which are chemicals listed by the State of California as known to cause cancer and birth
12 defects, or other reproductive harm, pursuant to the Safe Drinking Water and Toxic Enforcement
13 Act of 1986 ("Proposition 65"), California Health and Safety Code §25249.5 *et seq.*

14 1.4 On November 4, 2014, AYS sent 60-day Notices of Violation to the Defendant and
15 to public enforcers as required by Health and Safety Code section 25249.7, alleging that the
16 Defendant violated Proposition 65 by failing to provide clear and reasonable warnings before
17 exposing persons to cadmium and lead contained in the Covered Product.

18 1.5 The Parties have agreed to enter into this Consent Judgment to settle Plaintiff's
19 claims with regard to the Covered Product and to avoid prolonged and costly litigation.

20 1.6 By executing and complying with this Consent Judgment, neither Party admits any
21 facts or conclusions of law alleged in the Complaint, or the existence of any other statutory,
22 common law, or equitable claim or requirement relating to or arising from the production, sale, or
23 distribution of the Covered Product in California.

24 1.7 Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
25 remedy, or defense that AYS and the Defendant may have in any other, or in future, legal
26 proceedings unrelated to this action. This paragraph shall not diminish or otherwise affect the
27 obligation, responsibilities, and duties of the Parties under this Consent Judgment.

28 1.8 The term "Effective Date" means the date of entry of this Consent Judgment.

1 1.9 The only product covered by this Consent Judgment is the Covered Product, and
2 the only chemicals covered by this Consent Judgment are the chemicals lead and cadmium as
3 related to the Covered Product only.

4 2. JURISDICTION

5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
6 jurisdiction over the allegations contained in the Complaint and personal jurisdiction over the
7 Defendant; venue is proper in Alameda County; the Court has jurisdiction to enter this Consent
8 Judgment as a resolution of all claims alleged in the Complaint; and the Court shall retain
9 jurisdiction to enforce the Consent Judgment.

10 3. INJUNCTIVE RELIEF

11 3.1 Beginning no later than September 1, 2016 or forty-five days from the Effective
12 Date of this Consent Judgment, whichever is earlier, all Covered Products produced, distributed,
13 and/or sold by the Defendant in the State of California shall provide the following warning
14 statement in English and in any language used on the packaging of the Covered Product:

15 **WARNING:** This product will expose you to chemicals, including cadmium and lead,
16 known to the State of California to cause cancer and birth defects or other reproductive
17 harm.

18 3.2 Defendant shall prominently affix or print the warning statement and its translation
19 as required in Paragraph 3.1 on the Covered Product's packaging and labeling. The warning
20 statement and its translation (as set forth in Exhibit A) shall be displayed with such
21 conspicuousness, as compared with other words, statements, designs, or devices on the packaging
22 or labeling of the Covered Product, so as to render the warning statement likely to be read and
23 understood by an ordinary individual under customary conditions of purchase and use.

24 3.3 The Parties agree, and the Court so finds, that the content and the placement of the
25 warning statement and its translation as shown in Exhibit A hereto meets the requirements of
26 Paragraphs 3.1 – 3.2 of this Consent Judgment.

27 3.4 If Defendant sells the Covered Product via an internet site to customers located in
28 California, Defendant shall also prominently display the warning statement required in Paragraph
3.1, and its translation, on the internet site in conjunction with the Covered Product as set forth

1 below. The warning statement and its translation shall be displayed in the same type size as the
2 surrounding, non-heading text, either: (a) on the same page, without scrolling, as the product is
3 listed; (b) on the same page, without scrolling as the order form for the Covered Product; (b) on
4 the same page, without scrolling, as the price for the Covered Product; or (c) in a dialogue box
5 which appears and is visible when a California address for delivery is provided by the consumer,
6 so long as the dialogue box appears prior to completion of the internet sale and requires the
7 consumer to affirmatively accept receipt of the warning set forth in the dialogue box (the warning
8 language in the dialogue box shall be displayed in the same type size as the surrounding, non-
9 heading text on the screen at the time of the appearance of the dialogue box), as a condition
10 precedent to completing the sale.

11 3.5 If Defendant sells the Covered Product to California consumers through the website
12 of any internet retailer, Defendant shall send by first class mail or overnight delivery, prior to the
13 Compliance Date, a letter instructing the internet retailer to provide warning in the same manner as
14 required under Paragraph 3.4. The letter shall state that failure to provide these warnings may
15 result in liability for the internet retailer. In the letter, Defendant shall request that the internet
16 retailer customer respond with a written acknowledgement that it will comply with Defendant's
17 instructions. If the internet retailer does not provide written acknowledgement that it will comply
18 within 60 days, Defendant shall no longer sell the Covered Product through that retailer.

19 3.6 If Defendant sells the Covered Product via mail order to customers located in
20 California, Defendant shall prominently display the warning statement and its translation as
21 required in Paragraph 3.1 in the mail order catalogue in conjunction with the Covered Product as
22 set forth below. A product-specific warning shall appear either on the same page as the product is
23 displayed, or on the same page upon which the Covered Product's price is listed, in the same type
24 size as the surrounding, non-heading text. The warning shall be added in the first print run of the
25 mail order catalogue on or after the Effective Date.

26 3.7 Except as provided for in Paragraphs 5.7 through 5.9, any changes to the language
27 or format of the warnings required under Paragraph 3.1 through 3.6 shall be made only after Court
28 approval and following written notice to Plaintiff and to the Attorney General.

1 4. INVESTIGATION OF ALTERNATIVE SOURCES AND REDUCTION METHODS

2 4.1 Defendant shall make a good faith and diligent effort to identify an alternative
3 source for the Covered Product and/or methods of cultivation, harvesting, processing, packaging,
4 and distribution that reduce or avoid levels of cadmium and lead in the Covered Product so long as
5 Defendant continues to sell the Covered Product.

6 4.2 Within one year of the Effective Date of this Agreement, if Defendant continues to
7 sell the Covered Product, Defendant shall provide a report to AYS describing the investigation
8 provided for in Paragraph 4.1. The report shall include a full description of the results of the
9 investigation and any action the company has taken, or will take, in response.

10 5. TESTING AND REPORTING

11 5.1 Beginning on the Effective Date of this Agreement, and continuing for a period of
12 three years thereafter or as long as Defendant continues to sell the Covered Product, Defendant
13 shall have three randomly selected samples of the Covered Product (in the form intended for sale
14 to the end-user) from a single lot tested for lead and cadmium content at least once every six
15 months. The term "lot," as used herein, means a manufacturing cycle or series of manufacturing
16 cycles producing the Covered Product. Each sample to be tested shall be randomly selected using
17 a sound statistical sampling plan.

18 5.2 Testing for lead and cadmium content under Paragraph 5.1 shall be performed
19 using the protocols set forth in EPA Methods 6020, 6020a. The laboratory must digest at least 0.5
20 grams of each sample with a level of detection of at least 4 parts per billion. The sample
21 preparation method must use a microwave- or heat-assisted acid digestion method.

22 5.3 Testing for lead and cadmium content under Paragraph 5.2 shall be performed by
23 an independent third-party laboratory certified by the California Environmental Laboratory
24 Accreditation Program for the analysis of heavy metals or an independent third-party laboratory
25 registered with the Environmental Protection Agency.

26 5.4 Defendant shall retain all test results and documentation for a period of five years
27 from the date of the test.

28

1 5.5 Defendant agrees to deliver full laboratory reports, including all accompanying
2 quality assurance/quality control ("QA/QC") documentation, with results of testing for lead and
3 cadmium content under this Section to AYS within 14 days of receipt from the laboratory so long
4 as Defendant continues to sell the Covered Product. These reports shall be deemed and treated by
5 AYS as confidential information.

6 5.6 Plaintiff agrees to deliver to Defendant full laboratory reports, including all
7 accompanying QA/QC documentation, with results of testing for lead and cadmium content
8 conducted for or by AYS to Defendant on or prior to the date of execution of this Consent
9 Judgment. These reports shall be deemed and treated by Defendant as confidential information.

10 5.7 Provided that Defendant successfully reduces both the level of cadmium in the
11 Covered Product to below 4.1 micrograms per 30 gram serving and the level of lead in the
12 Covered Product to below .5 micrograms per 30 gram serving for three consecutive tests
13 conducted pursuant to this Section that occur at least six months apart, Defendant may, upon
14 mutual agreement with AYS in writing, modify the warning in Section 3.1 of this Consent
15 Judgment to state:

16 **Warning: Ingesting more than the recommended serving size of this**
17 **product will expose you to levels of chemicals that may cause cancer**
18 **and birth defects or other reproductive harm.**

19 5.8 Provided that Defendant successfully reduces both the level of cadmium in
20 the Covered Product to below 2.05 micrograms per 30 gram serving and the level of lead
21 in the Covered Product to below .25 micrograms per 30 gram serving for three
22 consecutive tests conducted pursuant to this Section, that occur at least six months apart,
23 Defendant may, upon mutual agreement with AYS in writing, remove the warning label
24 set forth in Section 3.1 or 5.6 of this Consent Judgment.

25 5.9 Any modification of the warning as provided for in Paragraphs 5.7 – 5.8
26 shall also apply to internet and mail order warnings specified in Paragraphs 3.4 – 3.6
27
28

1 6. SETTLEMENT PAYMENTS

2 6.1 Within thirty days of the Effective Date, Defendant shall pay \$2,500, in the form of
3 a check made payable to As You Sow, as a civil penalty pursuant to Health and Safety Code
4 section 25249.7(b). AYS shall remit seventy-five percent (75%) of this amount to the State of
5 California pursuant to Health and Safety Code section 25249.12(b).

6 6.2 In Lieu Payment: Within thirty days of the Effective Date, Defendant shall pay
7 \$2,500, in the form of a check made payable to AYS, with this amount to be used by AYS for
8 grants to California non-profit organizations and by the AYS Environmental Enforcement Fund.
9 These funds shall be used to reduce or remediate exposures to toxic chemicals and to increase
10 consumer, worker, and community awareness of the health hazards posed by toxic chemicals in
11 California. In deciding among grant proposals, the As You Sow Board of Directors ("Board")
12 takes into consideration a number of important factors, including: (1) the nexus between the harm
13 done in the underlying case(s) and the grant program work; (2) the potential for toxics reduction,
14 prevention, remediation, or educational benefits to California citizens from the proposal; (3) the
15 budget requirements of the proposed grantee and the alternate funding sources available to it for
16 its project; and, (4) the Board's assessment of the proposed grantee's chances for success in its
17 program work. AYS shall ensure that all funds will be disbursed and used in accordance with
18 AYS' mission statement, articles of incorporation, bylaws, and applicable state and federal laws
19 and regulations.

20 6.3 Within thirty days of the Effective Date, Defendant shall pay \$15,000, in the form
21 of a check made payable to Altshuler Berzon LLP, as reimbursement for Plaintiff's attorneys'
22 fees, investigation costs, and other reasonable litigation costs and expenses.

23 7. ENFORCEMENT OF CONSENT JUDGMENT

24 7.1 The Parties may, by motion filed in this Court, enforce the terms and conditions of
25 this Consent Judgment. In the event a dispute arises with respect to any of the provisions of this
26 Consent Judgment, and prior to the filing of any such motion, the Parties shall meet and confer
27 within ten days after either Party receives written notice of an alleged violation of this Agreement.
28

1 7.2 AYS is entitled to seek recovery of its reasonable attorneys' fees and costs incurred
2 in any such motion or proceeding in any dispute regarding compliance with the terms of this
3 Consent Judgment pursuant to the provisions of Code of Civil Procedure section 1021.5.

4 8. CLAIMS COVERED AND RELEASE

5 8.1 As to the Covered Product, this Consent Judgment is a full, final, and binding
6 resolution between AYS and the Defendant, its parent, Mishima Co., Ltd., subsidiaries and
7 shareholders, officers, directors, employees, agents, insurers and representatives, its successors
8 and assigns, and each of its wholesalers, licensors, licensees, auctioneers, retailers, distributors,
9 franchisees, dealers, customers, owners, purchasers, anyone who Defendant directly or indirectly
10 sells the Covered Product to, parent companies, predecessors, successors, corporate affiliates,
11 subsidiaries, and their respective past and present members, officers, directors, attorneys,
12 representatives, shareholders, agents, and employees, including but not limited to (collectively
13 "Mishima Releasees"), of all claims (as defined hereinafter) brought by AYS pursuant to
14 Proposition 65 for the alleged failure to provide clear and reasonable warnings of exposure to
15 cadmium and lead in the Covered Product produced, distributed or sold by the Defendant prior to
16 the Effective Date.

17 8.2 In further consideration of the promises and agreements herein contained, and for
18 the payments to be made pursuant to this Consent Judgment, AYS on behalf of itself and in its
19 representative capacity, its past and current agents, representatives, attorneys, successors, and/or
20 assignees hereby waives all rights to institute or participate in, directly or indirectly, any form of
21 legal action and releases all claims, including, without limitation, all actions, and causes of action,
22 in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses,
23 or expenses (including, but not limited to, investigation fees, expert fees, and attorney's fees) of
24 any nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"),
25 against Mishima Releasees, arising from the failure to provide Proposition 65 warnings regarding
26 alleged exposures to cadmium and lead in the Covered Product manufactured, distributed, or sold
27 before the Effective Date.

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1 8.3 Defendant hereby releases AYS from, and waives any claims against, AYS and its
2 parents, subsidiaries, officers, directors, employees, agents, insurers and representatives, and its
3 successors and assigns ("AYS Releasees") for injunctive relief or damages, penalties, fines,
4 sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses, or
5 any other sum incurred or claimed or which could have been claimed for matters related to the
6 Notices or Complaint.

7 8.4 Upon entry of the Consent Judgment, the Parties waive their respective rights to a
8 hearing or trial on the allegations of the Complaint.

9 9. GOVERNING LAW AND CONSTRUCTION

10 This Consent Judgment shall be governed by, and construed in accordance with, the laws
11 of the State of California.

12 10. MODIFICATION OF CONSENT JUDGMENT

13 This Consent Judgment may be modified only upon written agreement of the Parties with
14 approval of the Court, or pursuant to a court order issued upon noticed motion of a Party for good
15 cause shown and upon entry of a modified Consent Judgment by the Court. Any Party seeking to
16 modify this Consent Judgment shall meet and confer in good faith with the other Party prior to
17 filing a motion to modify the Consent Judgment and attempt to resolve any differences.

18 11. COURT APPROVAL

19 11.1 Unless otherwise stipulated by the Parties, the Court shall either approve or
20 disapprove of this Consent Judgment in its entirety, without alteration, deletion or amendment.

21 11.2 Unless otherwise stipulated by the Parties, if the Court fails to approve and order
22 entry of the Consent Judgment without any alteration, deletion or amendment, this Consent
23 Judgment shall become null and void upon the election of either Party, and shall not be introduced
24 into evidence or otherwise used in any proceeding for any purpose.

25 11.3 Defendant agrees not to oppose this Consent Judgment.
26
27
28

1 **12. ENTIRE AGREEMENT**

2 The Parties declare and represent that no promise, inducement or other agreement has been
3 made conferring any benefit upon any Party except those contained herein and that this agreement
4 contains the entire agreement pertaining to the subject matter hereof.

5 **13. DURATION OF CONSENT JUDGMENT**

6 This Consent Judgment shall terminate within five years of the Effective Date unless the
7 term of this Consent Judgment is extended. This Consent Judgment shall be extended only by a
8 stipulation of the Parties that is entered by the Court.

9 **14. APPLICATION OF CONSENT JUDGMENT**

10 This Consent Judgment shall apply to and be binding upon the Parties hereto, their
11 divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

12 **15. ATTORNEYS' FEES**

13 Except as specifically provided in this Consent Judgment, each Party shall bear its own
14 attorneys' fees and costs incurred in connection with the 60-day Notices and Plaintiff's Complaint.

15 **16. COMPLIANCE WITH HEALTH AND SAFETY CODE §25249.7**

16 16.1 Plaintiff shall comply with the reporting requirements referred to in Health and
17 Safety Code section 25249.7(f) (and established in Title 11 of the California Code of Regulations
18 sections 3000-3008), and shall move for approval of this Consent Judgment pursuant to the terms
19 thereof.

20 16.2 Upon request by AYS, Defendant shall provide a declaration in support of a motion
21 to approve this Consent Judgment.

22 **17. PROVISION OF NOTICE**

23 All correspondence and notices required by this Consent Judgment to the Parties shall be
24 sent to:

25 Plaintiff As You Sow

26 As You Sow Foundation
27 Attn: Danielle Fugere, President and Chief Counsel
1611 Telegraph Street, Suite 1450
Oakland, CA 94612
28 Tel: (510) 735-8158

With a copy to:

Barbara Chisholm
Tony LoPresti
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Tel: (415) 421-7151

Defendant Mishima Foods U.S.A. Inc.

Mr. Hideki Morimoto
Mishima Foods USA, Inc.
2340 Plaza Del Amo #105
Torrance, CA 90501
Tel: 310/787-1533

With a copy to:

Derrick K. Takeuchi
Greenberg, Whitcombe, Takeuchi, Gibson & Grayver, LLP
21515 Hawthorne Boulevard, Suite 450
Torrance, CA 90503
Tel: (310) 540-2000

18. EXECUTION AND COUNTERPARTS

This Consent Judgment may be executed in one or more counterparts and by means of facsimile or portable document format (.pdf), which taken together shall be deemed to constitute one document.

19. AUTHORIZATION

Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the Party represented and legally bind that Party. The undersigned have read, understand, and agree to all of the terms and conditions of this Consent Judgment.

1 APPROVED AS TO FORM:

2
3 Dated: 6/28, 2016

ALTSHULER BERZON LLP

4 By: Barbara J. Chisholm ⁷²
5 BARBARA J. CHISHOLM
6 ALTSHULER BERZON LLP

7 Attorneys for Plaintiff AS YOU SOW

8 Dated: 6/29, 2016

9 By: Derrick Takeuchi
10 DERRICK TAKEUCHI
11 GREENBERG, WHITCOMBE,
12 TAKEUCHI, GIBSON & GRAYVER,
13 LLP

14 Attorneys for Defendant MISHIMA FOODS U.S.A. INC.

15 SO AGREED:

16 Dated: 6/24, 2016

AS YOU SOW

17 By: [Signature]
18 Name: ANDREW BEHAR
19 Title: CEO

20 Dated: 6/29, 2016

MISHIMA FOODS U.S.A. INC.

21 By: [Signature]
22 Name: HIJIKI MORINOBU
23 Title: CEO


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IT IS SO ORDERED AND ADJUDGED:

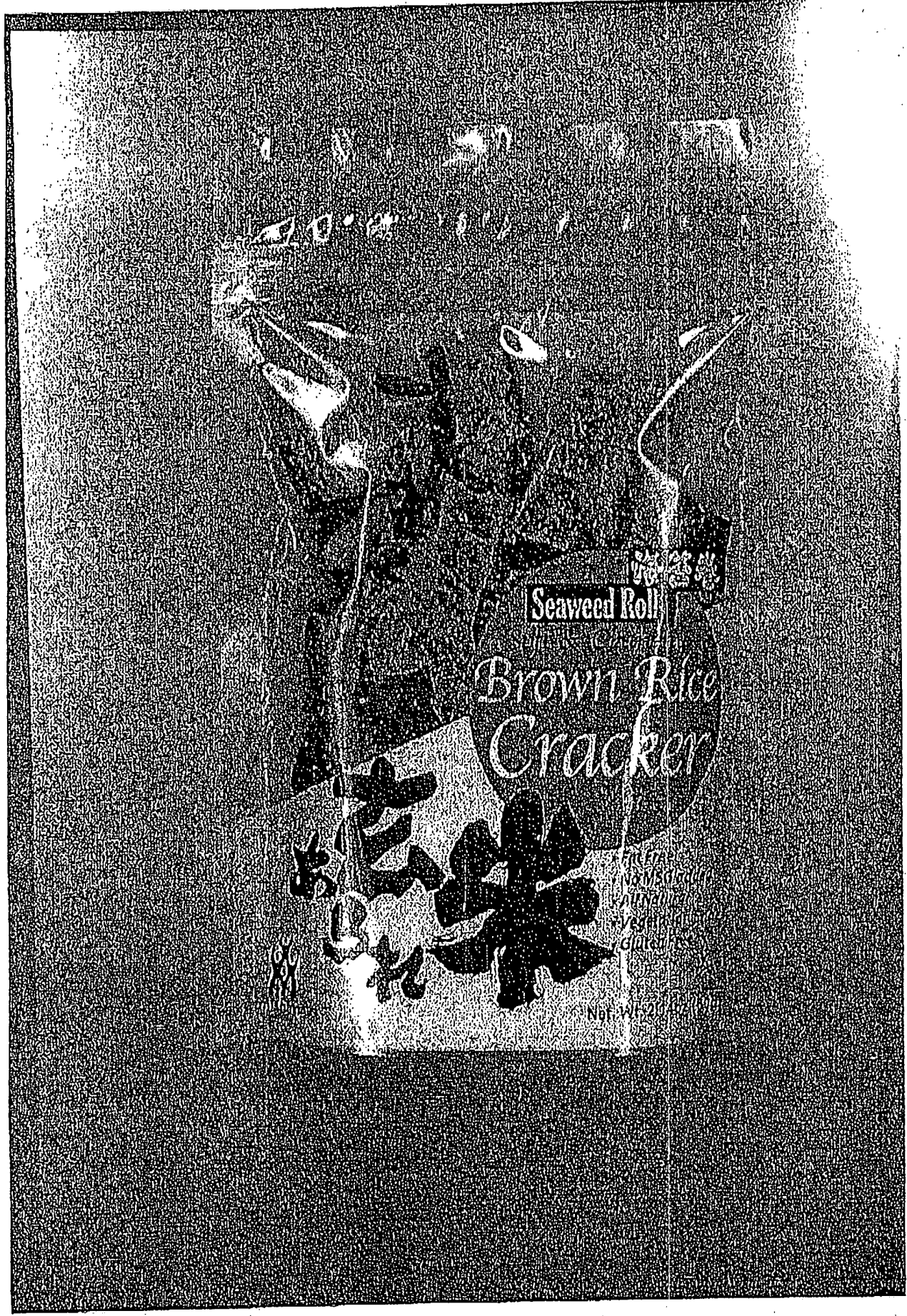
The Court hereby incorporates the terms of this Consent Judgment into this Order. If a Party violates the provisions of this Consent Judgment, this Court retains jurisdiction over this matter.

Dated: NOV 10 2016, 2016



HON.
JUDGE OF THE SUPERIOR COURT

EXHIBIT A



Seaweed Roll

Brown Rice
Cracker

NET WT. 2.0 OZ.


WARNING: This product will expose you to chemicals, including cadmium and lead, known to the State of California to cause cancer and birth defects or other reproductive harm.

Nutrition Facts
Serving Size 1/2 cup (125g)
Servings Per Container 2

Total Fat 10g	
Saturated Fat 6g	
Cholesterol 20mg	
Sodium 70mg	
Total Carbohydrate 25g	
Dietary Fiber 4g	
Protein 2g	

Vitamin A 20%
Vitamin C 10%

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www.jaishing.com



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