

11/04/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: A. Barton Deputy

1 Reuben Yeroushalmi (SBN 193981)
2 **YERUSHALMI & YERUSHALMI**
3 An Association of Independent Law Corporations
4 9100 Wilshire Boulevard, Suite 240W
5 Beverly Hills, California 90212
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8 Attorneys for Plaintiff,
9 Consumer Advocacy Group, Inc.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

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

14 Plaintiff,

15 v.

16 ISLAND PACIFIC DISTRIBUTION, INC.,
17 a California Corporation; *et al.*

18 Defendants.

CASE NO. BC638152

CONSENT JUDGMENT [~~PROPOSED~~]

Health & Safety Code § 25249.5 *et seq.*

19 **1. INTRODUCTION**

20 1.1 This Consent Judgment is entered into by and between plaintiff, CONSUMER
21 ADVOCACY GROUP, INC. (referred to as “CAG”) acting on behalf of itself and in the interest
22 of the public, and defendant, MONTALVAN SALES, INC., (hereinafter referred to as
23 “Defendant”), with each a Party to the action and collectively referred to as “Parties.”

24 **1.2 Defendant and Products**

25 1.2.1 Defendant is a California corporation which employs ten or more persons.
26 Defendant distributes, and sells: **Curry Powder**, including, but not limited to “Polynesian
27 Treasures® Curry Powder ‘The Perfect Seasoning’”; “Net Weight 8 oz. (227 gr)”; “Product of
28 Fiji”; “Compliments all cooked foods, meals, poultry and fish”; “Packed by: Montalvan Sales,

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1 Inc. Ontario, CA 91761 (909)930-5670” UPC: 7 56869 0022 6 (Hereinafter referred to as the
2 “Covered Products”)

3 1.2.2 For purposes of this Consent Judgment, Defendant is deemed a person in
4 the course of doing business in California and are subject to the provisions of the Safe Drinking
5 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.
6 (“Proposition 65”).

7 **1.3 Chemicals of Concern**

8 1.3.1 Lead and Lead Compounds (hereinafter “Lead”) are known to the State of
9 California to cause cancer and/or birth defects or other reproductive harm.

10 **1.4 Notices of Violation**

11 1.4.1 On or about June 16, 2016, CAG served Defendant and various public
12 enforcement agencies with a document entitled “60-Day Notice of Violation” (hereinafter
13 “Notice”) that provided the Defendant with notice of alleged violations of Health & Safety Code
14 § 25249.6 for failing to warn individuals in California of exposures to Lead in Curry Powder sold
15 and/or distributed by Defendant. No other public enforcer has commenced or diligently
16 prosecuted the allegations set forth in the Notice.

17 **1.5 Complaint**

18 1.5.1 On October 21, 2016, CAG filed a complaint for civil penalties and
19 injunctive relief (“Complaint”) in Los Angeles Superior Court, Case No. BC638152 against
20 Defendant. The Complaint alleges, among other things, that Defendant violated Proposition 65
21 by failing to give clear and reasonable warnings of exposure to Lead from Covered Products.

22 **1.6 Consent to Jurisdiction**

23 1.6.1 For purposes of this Consent Judgment, the Parties stipulate that this Court
24 has jurisdiction over the allegations of violations contained in the Complaint and personal
25 jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in the
26 County of Los Angeles and that this Court has jurisdiction to enter this Consent Judgment as a
27 full settlement and resolution of the allegations contained in cause of action one of the Complaint
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1 and of all claims which were or could have been raised by any person or entity based in whole or
2 in part, directly or indirectly, on the facts alleged therein or arising therefrom or related thereto.

3 **1.7 No Admission**

4 1.7.1 This Consent Judgment resolves claims that are denied and disputed. The
5 Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all
6 claims between the Parties for the purpose of avoiding prolonged litigation. Nothing in this
7 Consent Judgment shall be construed as an admission by the Parties of any material allegation of
8 the Complaint (each and every allegation of which Defendant denies), any fact, conclusion of
9 law, issue of law or violation of law, including without limitation, any admission concerning any
10 violation of Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine,
11 or the meaning of the terms “knowingly and intentionally expose” or “clear and reasonable
12 warning” as used in Health and Safety Code section 25249.6. Nothing in this Consent Judgment,
13 nor compliance with its terms, shall constitute or be construed as an admission by the Parties of
14 any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability
15 by any Defendant, its officers, directors, employees, or parent, subsidiary or affiliated
16 corporations, or be offered or admitted as evidence in any administrative or judicial proceeding
17 or litigation in any court, agency, or forum. Furthermore, nothing in this Consent Judgment shall
18 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any
19 other or future legal proceeding, except as expressly provided in this Consent Judgment.
20

21 **2. DEFINITIONS**

22 2.1 “Covered Products” means Curry Powder sold or supplied by Defendant.


23 2.2 “Effective Date” means the date that this Consent Judgment is approved by the
24 Court.

25 2.3 “Lead” means Lead and Lead Compounds.
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1 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**
2 **WARNINGS.**

3 3.1 After the Effective Date, Defendant shall not sell in California, offer for sale in
4 California, or ship for sale in California any Curry Powder unless the level of Lead does not
5 exceed 175 parts per billion (“ppb”).

6 3.2 For any Covered Products that exceeds their levels of Lead, that are placed into
7 the stream of commerce in California after the Effective Date, Defendant must provide a
8 Proposition 65 compliant warning for the Covered Products as set forth below. Any warning
9 provided pursuant to this section shall be affixed to the packaging of, or directly on, the Covered
10 Products, and be prominently placed with such conspicuousness as compared with other words,
11 statements, designs, or devices as to render it likely to be read and understood by an ordinary
12 individual under customary conditions before purchase or use. The warning must be set off from
13 other surrounding information, enclosed in a box. Where the packaging of the Covered Product
14 includes consumer information as defined by California Code of Regulations title 27 §25600.1(c)
15 in a language other than English, the warning must also be provided in that language in addition
16 to English. The Parties agree that the following warning language shall constitute compliance
17 with Proposition 65 with respect to the alleged Lead, in the Covered Products placed into the
18 steam of commerce by Defendant after the Effective Date:

19  **WARNING:** Consuming this product can expose you to
20 Lead, a chemical known to the State of California to cause
21 cancer and birth defects or other reproductive harm. For more
22 information go to www.P65Warnings.ca.gov/food.

23
24 3.3 For any Covered Products still existing in the Defendant's inventory as of the
25 Effective Date, Defendant shall place a Proposition 65 compliant warning on them, unless the
26 Covered Products does not exceed their respective levels of Lead. Any warning provided
27 pursuant to this section shall comply with the warning requirements under Section 3.2 above.
28

1 **4. SETTLEMENT PAYMENT**

2 4.1 **Payment and Due Date:** Within twenty (20) days of the Effective Date,
3 Defendant shall pay a total of two-hundred and sixty thousand dollars (\$260,000) in full and
4 complete settlement of all monetary claims by CAG related to the Notices, as follows:

5 4.1.1 **Civil Penalty:** Defendant shall issue separate checks totaling forty-five
6 thousand seven hundred and twenty dollars (\$45,720.00) as penalties pursuant to Health & Safety
7 Code § 25249.12:

8 (a) Defendant will issue a check made payable to the State of California’s
9 Office of Environmental Health Hazard Assessment (“OEHHA”) in the amount of thirty-four
10 thousand two hundred and ninety dollars (\$34,290.00) representing 75% of the total penalty and
11 Defendant will issue a separate check to CAG in the amount of eleven thousand four hundred and
12 thirty dollars (\$11,430.00) representing 25% of the total penalty; and

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

17 4.1.2 **Additional Settlement Payments:** Defendant shall make a separate
18 payment, in the amount of thirty-four thousand two hundred- and eighty dollars (\$34,280.00) as
19 an additional settlement payment to “Consumer Advocacy Group, Inc.” pursuant to Health &
20 Safety Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). Defendant
21 will issue a separate check to CAG for the Additional Settlement Payment. CAG will use this
22 payment as follows, eighty percent (80%) for fees of investigation, purchasing and testing for
23 Proposition 65 listed chemicals in various products, and for expert fees for evaluating exposures
24 through various mediums, including but not limited to consumer product, occupational, and
25 environmental exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and
26 retaining experts who assist with the extensive scientific analysis necessary for those files in
27 litigation and to offset the costs of future litigation enforcing Proposition 65 but excluding
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1 attorney fees; twenty percent (20%) for administrative costs incurred during investigation and
2 litigation to reduce the public's exposure to Proposition 65 listed chemicals by notifying those
3 persons and/or entities believed to be responsible for such exposures and attempting to persuade
4 those persons and/or entities to reformulate their products or the source of exposure to completely
5 eliminate or lower the level of Proposition 65 listed chemicals including but not limited to costs
6 of documentation and tracking of products investigated, storage of products, website
7 enhancement and maintenance, computer and software maintenance, investigative equipment,
8 CAG's member's time for work done on investigations, office supplies, mailing supplies and
9 postage. Within 30 days of a request from the Attorney General, CAG shall provide to the
10 Attorney General copies of documentation demonstrating how the above funds have been spent.
11 CAG shall be solely responsible for ensuring the proper expenditure of such additional settlement
12 payment.

13 **4.1.3 Reimbursement of Attorneys Fees and Costs:** Defendant shall pay one
14 hundred and eighty thousand dollars (\$180,000.00) to "Yeroushalmi & Yeroushalmi" as
15 reimbursement for reasonable investigation fees and costs, attorneys' fees, and any other costs
16 incurred as a result of investigating, bringing this matter to Defendant's attention, litigating, and
17 negotiating a settlement in the public interest.

18 4.2 Other than the payment to OEHHA described above, all payments referenced in
19 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi, Yeroushalmi
20 & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The payment to
21 OEHHA shall be delivered to Office of Environmental Health Hazard Assessment, Attn: Mike
22 Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Concurrently with
23 payment to OEHHA, Defendant shall provide CAG with written confirmation that the payment
24 to OEHHA was delivered.
25

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

27 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on behalf
28 of itself and in the public interest and Defendant for Defendant's alleged failure to provide a

1 Proposition 65 warning of exposure to Lead, from the Covered Products as set forth in the Notices,
2 and fully resolves all claims that have been or could have been asserted against Defendant in this
3 action up through the Effective Date for alleged failure to provide Proposition 65 warnings for
4 the Covered Products regarding Lead. CAG, on behalf of itself and in the public interest, hereby
5 discharges Defendant and its officers, directors, insurers, employees, parents, shareholders,
6 divisions, subdivisions, subsidiaries, and their successors and assigns (“Defendant Releasees”)
7 and all customers, retailers, downstream suppliers, downstream distributors, and downstream
8 entities in the distribution chain of the Covered Products to whom Defendant distributed or sold
9 Covered Products, and the predecessors, successors and assigns of any of them, and all of their
10 respective officers, directors, shareholders, members, managers, employees, agents, and insurers
11 only as to Covered Products sold and/or distributed by the Defendant (collectively, “Downstream
12 Releasees”), for all Covered Products placed into the stream of commerce up through the
13 Effective Date for violations of Proposition 65 based on exposure to Lead from the Covered
14 Products. Defendant’s compliance with the terms of this Consent Judgment shall be deemed to
15 constitute compliance with Proposition 65 regarding alleged exposures to Lead from the Covered
16 Products. Nothing in this Section affects CAG’s right to commence or prosecute an action under
17 Proposition 65 against any person other than Defendant Releasees or Downstream Releasees after
18 the Effective Date.

19
20 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
21 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
22 indirectly, any form of legal action and releases all claims, including, without limitation, all
23 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
24 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
25 fees, and attorneys’ fees) of any nature whatsoever, whether known or unknown, fixed or
26 contingent (collectively “Claims”), against the Released Parties arising from any violation of
27 Proposition 65 or any other statutory or common law regarding the failure to warn about exposure
28 to Lead from the Covered Products. In furtherance of the foregoing, as to alleged exposures to

1 Lead from the Covered Products, CAG on behalf of itself only, hereby waives any and all rights
2 and benefits which it now has, or in the future may have, conferred upon it with respect to Claims
3 arising from any violation of Proposition 65 or any other statutory or common law regarding the
4 failure to warn about exposure to Lead from the Covered Products by virtue of the provisions of
5 section 1542 of the California Civil Code, which provides as follows:

6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
7 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
8 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
9 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
 DEBTOR OR RELEASED PARTY.

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

23 **6. ENTRY OF CONSENT JUDGMENT**

24 6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
25 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
26 Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint.
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1 6.2 The Parties shall make all reasonable efforts possible to have the Consent
2 Judgment approved by the Court.

3 6.3 If this Consent Judgment is not approved in full by the Court, (a) this Consent
4 Judgment and any and all prior agreements between the Parties merged herein shall terminate and
5 become null and void, and the actions shall revert to the status that existed prior to the execution
6 date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of
7 the negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
8 have any effect, nor shall any such matter be admissible in evidence for any purpose in this Action,
9 or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to
10 modify the terms of the Consent Judgment and to resubmit it for approval.

11 **7. MODIFICATION OF JUDGMENT**

12 7.1 This Consent Judgment may be modified only upon written agreement of the
13 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
14 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

15 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
16 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

17 **8. RETENTION OF JURISDICTION**

18 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
19 terms of this Consent Judgment under Code of Civil Procedure § 664.6.

20 8.2 In any proceeding brought by either Party to enforce this Consent Judgment, the
21 prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

22 **10. DUTIES LIMITED TO CALIFORNIA**

23 9.1 This Consent Judgment shall have no effect on Covered Products sold by
24 Defendant outside the State of California.

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

26 10.1 CAG shall serve a copy of this Consent Judgment, signed by the Parties, on the
27 California Attorney General so that the Attorney General may review this Consent Judgment prior
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1 to its approval by the Court. No sooner than forty-five (45) days after the Attorney General has
2 received the aforementioned copy of this Consent Judgment, and in the absence of any written
3 objection by the Attorney General to the terms of this Consent Judgment, may the Court approve
4 this Consent Judgment.

5 **11. ATTORNEY FEES**

6 11.1 Except as specifically provided in Section 4.1.3 and 8.2, each Party shall bear its
7 own costs and attorney fees in connection with this action.

8 **12. GOVERNING LAW**

9 12.1 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 12.2 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 12.3 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 or
26 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
27 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
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1 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
2 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
3 this regard, the Parties hereby waive California Civil Code § 1654.

4 **13. EXECUTION AND COUNTERPARTS**

5 13.1 This Consent Judgment may be executed in counterparts and by means of
6 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
7 one document and have the same force and effect as original signatures.

8 **14. NOTICES**

9 14.1 Any notices under this Consent Judgment shall be by First-Class Mail or E-mail.

10
11 If to CAG:

12 Reuben Yeroushalmi
13 YEROUSHALMI & YEROUSHALMI
14 9100 Wilshire Boulevard, Suite 240W
15 Beverly Hills, CA 90212
16 (310) 623-1926
17 Email: lawfirm@yeroushalmi.com


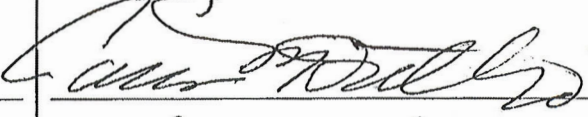
18
19 If to Defendant.:

20 Jad T. Davis
21 Shook, Hardy & Bacon, LLP
22 5 Park Plaza, Ste. 1600
23 Irvine, CA 92614
24 (949) 475-1500
25 jtdavis@shb.com

26
27 Carmen Montalvan
28 Montalvan Sales, Inc.
2225 S. Castle Harbour Pl
Ontario, CA 91761

1 15. AUTHORITY TO STIPULATE

2 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
4 of the party represented and legally to bind that party.

AGREED TO: Date: <u>May 31</u> , 2022 	AGREED TO: Date: <u>May 27</u> , 2022 
Name: <u>Michael Marcus</u> Title: <u>Director</u>	Name: <u>Carmen Montalvan</u> Title: <u>Vice President</u>
CONSUMER ADVOCACY GROUP, INC.	MONTALVAN SALES INC.

14 IT IS SO ORDERED.

16 Date: 11/04/2022


JUDGE OF THE SUPERIOR COURT