

08/17/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: L. Woods Deputy

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10 Attorneys for Plaintiff
11 CONSUMER ADVOCACY GROUP, INC.

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES**

14 CONSUMER ADVOCACY GROUP, INC.,

CASE NO. BC719892

15 Plaintiff,

~~16 [PROPOSED]~~ **CONSENT JUDGMENT
17 BETWEEN CONSUMER ADVOCACY
18 GROUP, INC. AND DAISO
19 CALIFORNIA LLC**

20 v.

21 DAISO CALIFORNIA LLC, *et al.*,

Complaint Filed: August 29, 2018

22 Defendants.

Trial Date: February 1, 2022

23 **1.0 INTRODUCTION**

24 1.1 This Consent Judgment is entered into by and between Plaintiff Consumer
25 Advocacy Group, Inc. ("CAG") acting on behalf of itself and in the public interest, and Defendant
26 Daiso California LLC ("Defendant" or "Daiso") with each a Party to the action and collectively
27 referred to as "Parties."

28 1.2 CAG is a California-based entity that seeks to promote awareness of exposures to
toxic chemicals and improve human health by reducing or eliminating hazardous substances
contained in consumer and industrial products.

1.3 CAG alleges Daiso is a California corporation which employs ten or more persons.
For purposes of this Consent Judgment only, Daiso is deemed a person in the course of doing

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1 business in California and subject to the provisions of the Safe Drinking Water and Toxic
2 Enforcement Act of 1986, California Health & Safety Code section 25249.6, *et seq.* (“Proposition
3 65”).

4 1.3.1 CAG alleges Daiso has sold and/or distributed “Covered Products,” which are
5 defined as dried seaweed including, but not limited to “Dried Seaweed” “Yaki Onigiri Nori” “NET
6 WT. 0.27 oz. (9.3g)” “Product of Japan” “Exported by Daiso Industries Co Ltd” “UPC 4 901174
7 511094” that are imported, sold, or distributed for sale in California by Daiso. [A list of exemplar
8 “Covered Products” is attached hereto as Exhibit A.]

9 1.4 CAG alleges the Covered Products contain: Lead and Lead Compounds (“Lead”).
10 CAG further alleges Daiso did not provide adequate warnings about those materials on the
11 Covered Products as required by Proposition 65.

12 1.5 On October 1, 1992, the Governor of California added Lead to the list of chemicals
13 known to the State to cause cancer (Cal. Code Regs. tit. 27, section 27001(b)). Pursuant to Health
14 and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of Lead to the
15 list of chemicals known to the State to cause cancer, Lead became fully subject to Proposition 65
16 warning requirements and discharge prohibitions.

17 1.6 On February 27, 1987, the Governor of California added Lead to the list of
18 chemicals known to the State to cause developmental and reproductive toxicity (Cal. Code Regs.
19 tit. 27, section 27001(c)). Lead is known to the State to cause developmental, female, and male
20 reproductive toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty
21 (20) months after addition of Lead to the list of chemicals known to the State to cause
22 developmental and reproductive toxicity, Lead became fully subject to Proposition 65 warning
23 requirements and discharge prohibitions.

24 1.7 Lead is hereinafter collectively referred to as the “Listed Chemical.”

25 1.8 On or about April 13, 2018 (Attorney General Notice Number 2018-00556), CAG
26 served Daiso California, LLC, Daiso Holding USA, Inc., Daiso Industries Co., Ltd., and Daiso
27 Japan Global, Inc., and certain relevant public enforcement agencies with documents entitled
28

1 “Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water And Toxic
2 Enforcement Act of 1986” (“Notice”) asserting Proposition 65 violations relating to alleged Lead
3 levels in the Covered Products.

4 1.9 The Notice alleged Daiso and the other noticed parties violated Proposition 65 by
5 failing to warn consumers in California that use of the Covered Products exposes persons to the
6 Listed Chemical.

7 1.10 On August 29, 2018, CAG filed a Complaint for civil penalties and injunctive relief
8 (“Complaint”) in Los Angeles County Superior Court, Case No. BC719892, against Defendant.
9 The Complaint alleges, among other things, Defendant violated Proposition 65 for allegedly failing
10 to give clear and reasonable warnings of alleged exposure to the Listed Chemical in certain dried
11 seaweed products Daiso distributed and/or sold in California.

12 1.11 By execution of this Consent Judgment, the Parties do not admit any facts or
13 conclusions of law, including, but not limited to, any facts or conclusions of law regarding any
14 violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine,
15 including, but not limited to, the meaning of the terms “knowingly and intentionally expose” or
16 “clear and reasonable warning” as used in Health and Safety Code section 25249.6. Nothing in this
17 Consent Judgment shall be construed as an admission of any fact, conclusion of law, issue of law,
18 or violation of law. Nothing in this Consent Judgment, nor compliance with its terms, shall constitute
19 or be construed, considered, offered, or admitted as evidence of an admission or evidence of fault,
20 wrongdoing, or liability in any administrative or judicial proceeding or litigation in any court,
21 agency, or forum, including against Daiso and/or their respective owners, officers, directors,
22 employees, parents, subsidiaries, affiliates, or agents. Except for the allegations settled and
23 compromised, nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy,
24 argument, or defense that CAG or Daiso may have against one another in any other legal proceeding
25 concerning allegations unrelated to the Complaint or the claims released herein.

26 1.12 “Effective Date” means the date this Consent Judgment is approved by the Court.
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1 **2.0 DAISO'S DUTIES**

2 2.1 Daiso agrees, promises, and represents that, after the Effective Date, to the extent
3 it ships or sells any Covered Products that exceed 75 parts per billion (ppb) Lead, it will provide
4 warnings on such Covered Products that comply with Proposition 65. The warnings shall be
5 provided in such a conspicuously and prominent manner that will assure the message is made
6 available and likely to be read, seen, or heard by the consumer prior to or at the time of the sale or
7 purchase. The Parties agree that product labeling stating that:

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

12 shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered
13 Products for all purposes. Daiso may choose to name additional chemicals.

14 2.2 The Parties agree and CAG acknowledges that the requirements of this Section 2.0
15 shall not apply to Covered Products that are already in the stream of commerce as of the Effective
16 Date, which Products are expressly subject to the releases provided in Section 5.0 herein.

17 **3.0 CAG'S DUTIES**

18 3.1 CAG agrees, promises and represents that, within fifteen (15) days after the receipt
19 of all payments outlined in Section 4.0 below, CAG shall voluntarily dismiss the Complaint
20 without prejudice.

21 **4.0 SETTLEMENT PAYMENTS**

22 4.1 Within fifteen (15) business days of the Effective Date, Daiso agrees to pay a total
23 of four hundred fifty thousand dollars (\$450,000) (the "Settlement Payment") in full and complete
24 settlement of any and all claims for civil penalties, damages, attorneys' fees, expert fees or any
25 other claim for costs, expenses or monetary relief of any kind for claims that were or could have
26 been asserted in the Notice or Complaint, by three separate checks apportioned as follows:
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1 4.1.1 Civil Penalty: Daiso shall issue two separate checks for a total amount of
2 one hundred and eight thousand, six hundred dollars (\$108,600) as follows: (a) one check made
3 payable to the State of California’s Office of Environmental Health Hazard Assessment
4 (“OEHHA”) in the amount of eighty-one thousand, four hundred and fifty dollars (\$81,450),
5 representing 75% of the total penalty; and (b) one check to CAG in the amount of twenty-seven
6 thousand, one hundred and fifty dollars (\$27,150), representing 25% of the total penalty.
7 OEHHA’s check shall be delivered to the Office of Environmental Health Hazard Assessment at
8 P.O. Box 4010 Sacramento, California 95812-4010, and directed to the attention of Mike Gyurics.
9 CAG’s check shall be delivered to Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite
10 240W, Beverly Hills, California 90212, and directed to the attention of Reuben Yeroushalmi. An
11 IRS Form 1099 shall be issued for each such payment. The first Form 1099 shall be issued to
12 OEHHA, P.O. Box 4010 Sacramento, CA 95812-4010, Attn: Mike Gyurics (EIN: 68-0284486)
13 in the amount of \$81,450. The second Form 1099 shall be issued in the amount of \$27,150 to
14 CAG and delivered to Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W,
15 Beverly Hills, California 90212.

16 4.1.2 Reimbursement of Attorneys’ Fees and Costs: two hundred and sixty
17 thousand dollars (\$260,000) of the Settlement Payment shall be paid to Yeroushalmi &
18 Yeroushalmi, as CAG’s attorneys, for reasonable investigation fees and costs, attorneys’ fees,
19 expert fees, and any and all other costs and expenses incurred as a result of investigating and
20 bringing this matter to Daiso’s attention, litigating, negotiating a settlement in the public interest,
21 and seeking and obtaining court approval of this Consent Judgment. The check shall be delivered
22 to Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California
23 90212, and directed to the attention of Reuben Yeroushalmi.

24 4.1.3 Additional Settlement Payments: Settling Defendants shall issue one check
25 for eighty-one thousand four hundred dollars (\$81,400) to “Consumer Advocacy Group, Inc.”
26 pursuant to Health & Safety Code § 25249.7(b) and California Code of Regulations, Title 11 §
27 3203(d). CAG will use this portion of the Total Settlement Payment as follows, eighty five percent
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1 (85%) for fees of investigation, purchasing and testing for the Proposition 65 Listed Chemical in
2 various products, and for expert fees for evaluating exposures through various mediums, including
3 but not limited to consumer product, occupational, and environmental exposures to the Proposition
4 65 Listed Chemical, and the cost of hiring consulting and retaining experts who assist with the
5 extensive scientific analysis necessary for those files in litigation and to offset the costs of future
6 litigation enforcing Proposition 65 but excluding attorney fees; fifteen percent (15%) for
7 administrative costs incurred during investigation and litigation to reduce the public's exposure
8 to the Proposition 65 Listed Chemicals by notifying those persons and/or entities believed to be
9 responsible for such exposures and attempting to persuade those persons and/or entities to
10 reformulate their products or the source of exposure to completely eliminate or lower the level of
11 the Proposition 65 Listed Chemicals including but not limited to costs of documentation and
12 tracking of products investigated, storage of products, website enhancement and maintenance,
13 computer and software maintenance, investigative equipment, CAG's member's time for work
14 done on investigations, office supplies, mailing supplies and postage Within 30 days of a request
15 from the Attorney General, CAG shall provide to the Attorney General copies of documentation
16 demonstrating how the above funds have been spent. CAG shall be solely responsible for ensuring
17 the proper expenditure of such additional settlement payment.

18 4.1.4 By the Effective Date, Yeroushalmi & Yeroushalmi shall provide Daiso
19 with an IRS W-9 reflecting its Employer Identification Number. The Parties acknowledge Daiso
20 cannot issue any settlement payments to CAG until it receives the requisite IRS W-9 form, and
21 that any delay in payment resulting from Yeroushalmi & Yeroushalmi's failure timely to provide
22 such IRS W-9 form shall not constitute a breach of the Consent Judgment.

23 **5.0 RELEASE**

24 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, acting
25 in its individual capacity, on the one hand, and (a) Daiso, Daiso Holding USA, Inc., Daiso
26 Industries Co., Ltd., and Daiso Japan Global, Inc., and its owners, parents, subsidiaries, affiliates,
27 sister and related companies, employees, shareholders, officers, directors, insurers, attorneys,

1 **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
2 **FAVOR AT THE TIME OF EXECUTING THE RELEASE**
3 **AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
4 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
5 **WITH THE DEBTOR OR RELEASED PARTY.**

6 5.4 CAG understands and acknowledges that the significance and consequence of this
7 waiver of California Civil Code section 1542 is that even if CAG suffers future damages arising
8 out of or resulting from, or related directly or indirectly to, in whole or in part, Claims arising from
9 any violation of Proposition 65 or any other statutory or common law regarding the Covered
10 Products manufactured, distributed or sold by the Released Parties through the Effective Date
11 regarding the failure to warn about actual or alleged exposure to the Listed Chemical from the
12 Covered Products, CAG will not be able to make any claim for those damages, penalties or other
13 relief against the Released Parties. Furthermore, CAG acknowledges that it intends these
14 consequences for any such Claims arising from any violation of Proposition 65 or any other
15 statutory or common law regarding the failure to warn about exposure to the Listed Chemical from
16 the Covered Products as may exist as of the date of this release but which CAG does not know
17 exist, and which, if known, would materially affect their decision to enter into this Consent
18 Judgment, regardless of whether their lack of knowledge is the result of ignorance, oversight, error,
19 negligence, or any other cause.

20 5.5 Nothing in this Consent Judgment shall, in any manner, affect any other case that
21 CAG is currently litigating.

22 **6.0 GOVERNING LAW**

23 6.1 The terms of this Consent Judgment shall be governed by the laws of the State of
24 California and apply within the State of California.

25 6.2 The Parties, including their counsel, have participated in the preparation of this
26 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
27 Consent Judgment was subject to revision and modification by the Parties and has been accepted
28 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or

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

6 **7.0 SERVICE ON AND REPORTING OF CONSENT JUDGMENT TO THE**
7 **CALIFORNIA ATTORNEY GENERAL**

8 7.1 CAG shall serve a copy of this Consent Judgment, signed by both Parties, on the
9 California Attorney General so the Attorney General may review this Consent Judgment prior to
10 its submittal to the Court for approval. No sooner than forty-five (45) days after the Attorney
11 General has received the aforementioned copy of this Consent Judgment, CAG may then submit
12 it to the Court for approval.

13 7.2 CAG shall report this Consent Judgment to the California Attorney General's
14 Office within five (5) days of its Effective Date.

15 **8.0 ENTRY OF CONSENT JUDGMENT**

16 8.1 This Consent Judgment shall apply to, be binding upon, and inure to the benefit of,
17 CAG and the Releasees and Downstream Releasees identified in Section 5.0 herein.

18 8.2 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
19 California Health & Safety Code section 25249.7(f). The Parties agree to act in good faith to
20 obtain Court approval of the Consent Judgment. Upon entry of the Consent Judgment, CAG and
21 Daiso waive their respective rights to a hearing and trial on the allegations in the Notice and
22 Complaint.

23 8.3 If this Consent Judgment is not approved in full by the Court: (a) this Consent
24 Judgment and any and all prior agreements between the Parties merged herein shall terminate and
25 become null and void, and the actions shall revert to the status that existed prior to the execution
26 date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
27 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
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1 have any effect, nor shall any such matter be admissible in evidence for any purpose in this action,
2 or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to
3 modify the terms of the Consent Judgment and to resubmit it for approval.

4 **9.0 ENFORCEMENT OF CONSENT JUDGMENT**

5 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
6 of this Consent Judgment under Code of Civil Procedure section 664.6.

7 9.2 CAG may bring an action to enforce any breach of the monetary settlement terms
8 in Section 5.0 herein, upon five (5) days written notice to Daiso of the alleged breach in accordance
9 with the notice requirements set forth in Section 11.0 herein.

10 9.3 Daiso may bring an action to enforce any breach of the terms of this Consent
11 Judgment by CAG upon five (5) days written notice to CAG of the alleged breach in accordance
12 with the notice requirements set forth in Section 11.0 herein.

13 9.4 In any action to enforce the terms of this Consent Judgment, the prevailing party
14 shall be entitled to recover its reasonable attorneys' fees and costs associated with bringing such
15 action.

16 **10.0 MODIFICATION OF CONSENT JUDGMENT**

17 10.1 Any modification to this Consent Judgment shall be upon written agreement of the
18 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
19 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

20 10.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
21 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

22 **11.0 NOTICES**

23 11.1 Any notice required or permitted herein shall be effective only if given in writing
24 and delivered in person, by certified or registered mail return receipt requested, or traceable
25 overnight delivery service, to the following designees:

1 For CAG:

2 Reuben Yeroushalmi, Esq.
3 YEROUSHALMI & YEROUSHALMI
4 9100 Wilshire Boulevard, Suite 240W
5 Beverly Hills, CA 90212
6 reuben@yeroushalmi.com

7 For Daiso:

8 Tom Van Wyngarden, Esq.
9 PILLSBURY WINTHROP SHAW PITTMAN LLP
10 725 South Figueroa Street, Suite 2800
11 Los Angeles, CA 90017
12 tom.vanwyngarden@pillsburylaw.com

13 A courtesy copy of all such notices shall likewise be emailed to the recipient using the
14 above-noted email addresses. Any party may change its designee(s) for purposes of notification
15 by providing written notice of such change pursuant to this section.

16 **12.0 ENTIRE AGREEMENT**

17 12.1 This Consent Judgment contains the sole and entire agreement and understanding
18 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
19 negotiations, commitments and understandings related hereto. No representations, oral or
20 otherwise, express or implied, other than those contained herein have been made by any party
21 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
22 to exist or to bind any of the Parties.

23 **13.0 SEVERABILITY**

24 13.1 If, after execution of this Consent Judgment, a court finds any provisions of this
25 Consent Judgment unenforceable, then the validity of the remaining enforceable provisions shall
26 not be adversely affected.

1 **14.0 EXECUTION IN COUNTERPARTS**

2 14.1 This Consent Judgment may be executed in counterparts, which taken together shall
3 be deemed to constitute the same document. A facsimile or portable document format (PDF)
4 signature shall be as valid as the original.

5 **15.0 AUTHORITY TO ENTER INTO CONSENT JUDGMENT**

6 15.1 CAG represents its signatory to this Consent Judgment has full authority to enter
7 into and legally bind CAG to this Consent Judgment.

8 15.2 Daiso represents its signatory to this Consent Judgment has full authority to enter
9 into and legally bind Daiso to this Consent Judgment.

10
11 AGREED TO:

AGREED TO:

12 Date: April 19, 2021

Date: April 9, 2021

13 Michael Marcus

Tomohito Takao

14 Name: Michael Marcus

Name: Tomohito Takao

15 Title: Director

Title: Executive Vice President

16 CONSUMER ADVOCACY GROUP, INC. DAISO CALIFORNIA LLC

17
18 IT IS SO ORDERED.

19 Date: April 9



Gregory Keosian

JUDGE OF THE SUPERIOR COURT

Gregory Keosian / Judge

EXHIBIT A: Covered Products

1
2 WP Korean Seaweed Snack Original, Identifying Code 11152295046
3 WP Korean Seaweed Snack Wasabi, Identifying Code 11152295077
4 Korean Seasoned Seaweed Iwanori, Identifying Code 74410516017
5 Annie Chuns Organic Seaweed Snacks Salt, Identifying Code 765667110737
6 Annie Chuns Organic Seaweed Snacks Sesame, Identifying Code 765667110362
7 Annie Chuns Organic Seaweed Snacks Sea Salt, Identifying Code 765667110744
8 Annie Chuns Organic Seaweed Snacks Wasabi, Identifying Code 765667110379
9 BestPlanet Dried Cloud Ear Mushroom, Identifying Code 4903222960250
10 Honpo Dried Thin Sliced Seaweed, Identifying Code 4902685103709
11 Mishima Foods Takikomi Wakame, Identifying Code 4902765301650
12 Shimaya Kelp Soup Stock, Identifying Code 4901740125533
13 Nihon Kaisui Toasted Seaweed, Identifying Code 4901174511094
14 BestPlanet Dried Green Laver, Identifying Code 4903222960267
15 Instant Seaweed Salad, Identifying Code 4902378031807
16 Yamanaka Foods Vinegar Kelp, Identifying Codes 4902378032347, 4902378052246
17 Agar Seaweed Salad, Identifying Code 4902378031784
18 Yamanaka Foods Cut Wakame, Identifying Code 4902378032682
19 YAMAISO Soy sauce flavored dried laver 5sheets x 6pks 7.5g, Identifying Code
20 4903182030031 Nihon Kaisui Toasted (5 sheets), Identifying Code 4901174511070
21 Nihon Kaisui Seasoned Seaweed (8 sheets), Identifying Code 4901174511100
22 Nihon Kaisui Seasoned Seaweed (10 sheets), Identifying Code 4901174511117
23 Nihon Kaisui Toasted Seaweed Shredded, Identifying Code 4901174511131
24 SEAGRASS SALAD, Identifying Code 4902378090682
25 LAVER, Identifying Code 4514387800031
26 hijiki, Identifying Code 4902421101105
27 AJITSUKE MOMI NORI, Identifying Code 4901174511124
28 kirikonbu, Identifying Code 4902421101099
YAMAISO Soy sauce flavored dried seaweed 4cut x 10sheets, Identifying Code 4903182040122
tororokonbu, Identifying Code 4902421100368
YAMAISO Roasted laver 2cut x 5sheets 35g, Identifying Code 4903182030406
DRIED FOODS BROWN ALGA, Identifying Code 4903222960281
SHIRAKO Roasted laver seaweed, Identifying Code 4901673254058
SEAGRASS SALAD, Identifying Code 4902378091054
YAMAISO Cut dried laver 5g, Identifying Code 4903182030208
SHIRAKO Seasoned Laver Seaweed 5sheets, Identifying Code 4901673254065
maruai yaki omsubinori 10mai, Identifying Code 4902709551493
maruai aji omusubinori 10mai, Identifying Code 4902709551509
maruai hosogeri kizaminori 8g, Identifying Code 4902709551882
maruai ajitsuke mominori, Identifying Code 4902709551899
Season/season, Identifying Code 4903222962827
KOREA LAVER, Identifying Code 4947678190335
PREPARED SEAWEEDS, Identifying Code 4970148006010
PREPARED SEAWEEDS, Identifying Code 4970148006188
NAGAINORI WASABINORI 4 cut 6 sheet, Identifying Code 4902048311888

[PROPOSED] CONSENT JUDGMENT

1 CUT SEAWEED, Identifying Code 4901925270195
2 kankoku nori japan kokuten wild sesame seaweed 8cut 8pieces 2packs, Identifying Code
3 4562366263636
4 YAMANAKA FOODS Dried Hijiki seaweed 40g, Identifying Code 4902378081215
5 YAMAISO Soy sauce flavored dried laver 8cut 5sheets x 4pks 53g, Identifying Code
6 4903182030239
7 YAMANAKA FOODS Dried seaweed 25g, Identifying Code 4902378081208
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