

Electronically Received 11/26/2019 07:40 PM

Electronically Received 11/26/2019 07:40 PM

1 Reuben Yeroushalmi (SBN 193981)
2 Peter T. Sato (SBN 238486)
3 Shannon E. Royster (SBN 314126)
4 **YEROUSHALMI & YEROUSHALMI**
5 An Association of Independent Law Corporations
6 9100 Wilshire Blvd., Suite 240W
7 Beverly Hills, California 90212
8 Telephone: 310-623-1926
9 Facsimile: 310-623-1930
10 Attorneys for Plaintiff,
11 Consumer Advocacy Group, Inc.

FILED
Superior Court of California
County of Los Angeles

02/14/2020

Sherril R. Carter, Executive Officer / Clerk of Court

By: L. Woods Deputy

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **IN AND FOR THE COUNTY OF LOS ANGELES**
9 **STANLEY MOSK COURTHOUSE**

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

13 Plaintiff,

14 v.

16 EL MONTE SUPERSTORE, INC., a
17 California Corporation, et. al.,

18 Defendants.

CASE NO. 18STCV02562

CONSENT JUDGMENT ~~[PROPOSED]~~

Health & Safety Code §25249.5

Dept. 61
Hon. Gregory Keosian

Filing Date: 10/26/2018
Trial Date: 8/11/2020

21 **1. INTRODUCTION**

22 1.1 This Consent Judgment is entered into by and between Plaintiff, CONSUMER
23 ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") acting on behalf of itself and in the interest
24 of the public, and Defendant, ORIENTAL FOODBANK, INC. ("Defendant" or "ORIENTAL")
25 with each a Party to the action and collectively referred to as "Parties."
26

27 //

1 1.4.2 On or about August 29, 2019, CAG served ORIENTAL and various public
2 enforcement agencies with a document titled “60-Day Notice of Intent to Sue for Violation of the
3 Safe Drinking Water and Toxic Enforcement Act of 1986” (AG#2019-01682) (“Notice”) that
4 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for
5 failing to warn individuals in California of exposures to Lead, contained in certain broken rice
6 products sold by ORIENTAL in California. No public enforcer has commenced or diligently
7 prosecuted the allegations set forth in the Notice.

8 **1.5 Complaint.**

9 1.5.1 On October 26, 2018, CAG filed a Complaint against ORIENTAL for civil
10 penalties and injunctive relief in Los Angeles County Superior Court, Case No. 18STCV02562,
11 alleging that Defendants violated Proposition 65 for allegedly failing to give clear and reasonable
12 warnings of alleged exposure to Lead, Cadmium, and Arsenic in certain dried anchovies products
13 ORIENTAL distributed and/or sold in California.

14 1.5.2 On November 19, 2019, CAG filed its First Amended Complaint against ORIENTAL
15 for civil penalties and injunctive relief (the “Complaint”) in Los Angeles County Superior Court,
16 Case No. 18STCV02562, adding allegations that Defendant violated Proposition 65 for allegedly
17 failing to give clear and reasonable warnings of alleged exposure to Lead in certain broken rice
18 products ORIENTAL distributed and/or sold in California.

19 **1.6 Consent to Jurisdiction**

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

1 **1.7 No Admission**

2 This Consent Judgment resolves claims that are denied and disputed. The Parties enter
3 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
4 the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment
5 shall be construed as an admission by the Parties of any material allegation in the Notices or the
6 Complaint, or of any fact, conclusion of law, issue of law or violation of law of any kind,
7 including without limitation, any admission concerning any alleged or actual violation of
8 Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, including
9 but not limited to the meaning of the terms “knowingly and intentionally expose” or “clear and
10 reasonable warning” as used in Health and Safety Code section 25249.6. Nothing in this
11 Consent Judgment, nor compliance with its terms, shall constitute or be construed as an
12 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of
13 fault, wrongdoing, or liability by ORIENTAL, its officers, directors, employees, or parent,
14 subsidiary or affiliated corporations, or be offered or admitted as evidence in any administrative
15 or judicial proceeding or litigation in any court, agency, or forum. Furthermore, nothing in this
16 Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the
17 Parties may have in any other or future legal proceeding, except as expressly provided in this
18 Consent Judgment.
19

20 **2. DEFINITIONS**

21 2.1 “Covered Products” means:

22 2.1.1 Dried Anchovies, which includes but is not limited to: “SEASONED
23 ANCHOVIES WITH SESAME” “IMPORTED BY: ORIENTAL FOODBANK,
24 INC.” “COMMERCE, CA 90040” “PRODUCT OF THAILAND” “NET WEIGHT 3.5 OZ. (100
25 g.)” “Seasoned Anchovy w/Sesam (OP) 0 49884 01142 6”; UPC 049884011436; UPC
26 049884040917.” (“Dried Anchovies”)

27 2.1.2 Broken Rice, which includes but is not limited to: ““Thai Hom Mali Broken
28

Rice”; “Gao Tam Sol”; “Net Weight: 5 Lbs. (2.27KGS.)”; “Imported by Oriental Food Bank Inc. Commerce, CA 90040”; “UPC 0 49884 91106 4.” (“Broken Rice”) Dried Anchovies and Broken Rice are referred to collectively as “Covered Products.” The Covered Products are limited to those sold by or supplied by ORIENTAL.

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

2.3 “Lead” means Lead and Lead Compounds.

2.4 “Cadmium” means Cadmium and Cadmium Compounds.

2.5 “Arsenic” means Inorganic Arsenic Oxides and Inorganic Arsenic Compounds.

2.6 “Listed Chemicals” means Lead, Cadmium, and Arsenic.

2.7 “Notices” means Plaintiff’s April 18, 2018 Notice and August 29, 2019 Notice.


3. INJUNCTIVE RELIEF & CLEAR AND REASONABLE WARNINGS.

3.1 After the Effective Date, ORIENTAL shall not sell, offer for sale in California, or ship for sale in California any Dried Anchovies unless the level of Lead does not exceed 10 parts per billion (“ppb”) and the level of Cadmium does not exceed 85 ppb and the level of Arsenic does not exceed 20 ppb. ORIENTAL further agrees that after the Effective Date, ORIENTAL shall not sell, offer for sale in California, or ship for sale in California any Broken Rice unless the level of Lead does not exceed 56 ppb. For any Covered Products that exceed those respective levels that are sold in California after the Effective Date, ORIENTAL must provide a Proposition 65 compliant warning for the Covered Products as set forth below.

The Parties agree that the following warning language shall constitute compliance with Proposition 65 with respect to the alleged Listed Chemicals in the Dried Anchovies distributed and/or sold by the Defendant after the Effective Date:

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

1 The Parties agree that the following warning language shall constitute compliance with
2 Proposition 65 with respect to the alleged Listed Chemicals in the Broken Rice distributed and/or
3 sold by the Defendant after the Effective Date:

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

7 3.2 For any Covered Products still existing in Defendants' inventory as of the
8 Effective Date, Defendants shall place a Proposition 65 compliant warning on them. Any
9 warning provided pursuant to this section shall be affixed to the packaging of, or directly on, the
10 Covered Products, and be prominently placed with such conspicuousness as compared with other
11 words, statements, designs, or devices as to render it likely to be read and understood by an
12 ordinary individual under customary conditions before purchase or use. The equilateral triangle
13 pictogram shall be in yellow with a black exclamation mark; provided however, the pictogram
14 may be in white instead of yellow if the Covered Product label does not contain the color yellow.
15 The Parties agree that the foregoing warning language shall constitute compliance with
16 Proposition 65 with respect to the alleged Listed Chemicals in the Covered Products existing in
17 Defendants' inventory as of the Effective Date.

18 **4. SETTLEMENT PAYMENT**

19 4.1 **Payment and Due Date:** After the Effective Date, Defendants shall pay a total of
20 two hundred forty-five thousand dollars and zero cents (\$245,000.00) in full and complete
21 settlement of any and all claims for civil penalties, damages, attorney's fees, expert fees or any
22 other claim for costs, expenses or monetary relief of any kind for claims that were or could have
23 been asserted in the Notices or Complaint; the apportionment of this payment is to be made as
24 follows:
25
26
27
28

1 **4.1.1 Civil Penalty:** Defendants shall issue two separate checks totaling fifty-
2 seven thousand two hundred dollars and zero cents (\$57,200.00) as follows for alleged civil
3 penalties pursuant to Health & Safety Code § 25249.12:

4 (a) Defendants will issue one check made payable to the State of
5 California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of
6 forty-two thousand nine hundred dollars and zero cents (\$42,900.00) and representing 75% of the
7 total civil penalty and Defendants will issue a second check to CAG in the amount of fourteen
8 thousand three hundred dollars (\$14,300.00) representing 25% of the total civil penalty;

9 (b) Separate 1099s shall be issued for each of the above payments:
10 Defendants will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
11 0284486) in the amount of forty-two thousand nine hundred dollars and zero cents (\$42,900.00)
12 Defendants will also issue a 1099 to CAG in the amount of fourteen thousand three hundred dollars
13 and zero cents (\$14,300.00) and deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire
14 Boulevard, Suite 240W, Beverly Hills, California 90212.

15 **4.1.2 Additional Settlement Payments:** ORIENTAL shall issue one check for
16 forty-two thousand eight hundred dollars and zero cents (\$42,800.00) to "Consumer Advocacy
17 Group, Inc." pursuant to Health & Safety Code § 25249.7(b) and California Code of Regulations,
18 Title 11 § 3203(d). CAG will use this portion of the Total Settlement Payment as follows, eighty
19 five percent (85%) for fees of investigation, purchasing and testing for Proposition 65 Listed
20 Chemicals in various products, and for expert fees for evaluating exposures through various
21 mediums, including but not limited to consumer product, occupational, and environmental
22 exposures to Proposition 65 Listed Chemicals, and the cost of hiring consulting and retaining
23 experts who assist with the extensive scientific analysis necessary for those files in litigation and
24 to offset the costs of future litigation enforcing Proposition 65 but excluding attorney fees; fifteen
25 percent (15%) for administrative costs incurred during investigation and litigation to reduce the
26 public's exposure to Proposition 65 Listed Chemicals by notifying those persons and/or entities
27

1 believed to be responsible for such exposures and attempting to persuade those persons and/or
2 entities to reformulate their products or the source of exposure to completely eliminate or lower
3 the level of Proposition 65 Listed Chemicals including but not limited to costs of documentation
4 and tracking of products investigated, storage of products, website enhancement and maintenance,
5 computer and software maintenance, investigative equipment, CAG's member's time for work
6 done on investigations, office supplies, mailing supplies and postage Within 30 days of a request
7 from the Attorney General, CAG shall provide to the Attorney General copies of documentation
8 demonstrating how the above funds have been spent. CAG shall be solely responsible for ensuring
9 the proper expenditure of such additional settlement payment.

10 **4.1.3 Reimbursement of Attorney Fees and Costs:** Defendants shall pay one
11 hundred forty-five thousand dollars and zero cents (\$145,000.00) payable to "Yeroushalmi &
12 Yeroushalmi" as complete reimbursement for any and all reasonable investigation fees and costs,
13 attorneys' fees, expert fees, and any and all other costs and expenses incurred as a result of
14 investigating, bringing this matter to the ORIENTAL's attention, litigating, negotiating a
15 settlement in the public interest, and seeking and obtaining court approval of this Consent
16 Judgment.

17 **4.2** Other than the payment to OEHHA described above, all payments referenced in
18 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi, Yeroushalmi
19 & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The payment to
20 OEHHA shall be delivered directly to Office of Environmental Health Hazard Assessment, Attn:
21 Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. ORIENTAL shall
22 provide written confirmation to CAG concurrently with payment to OEHHA.

23
24 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

25 **5.1** This Consent Judgment is a full, final, and binding resolution between CAG, on
26 behalf of itself and in the public interest, and ORIENTAL and their officers, directors, insurers,
27 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
28

1 companies, and their successors and assigns ("Defendant Releasees"), and all entities to whom
2 ORIENTAL directly or indirectly distribute or sell Covered Products, including, but not limited
3 to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members,
4 licensees, and the successors and assigns of any of them, including but not limited to, EL MONTE
5 SUPERSTORE INC., a California Corporation, SF SUPERMARKET, INC., a California
6 Corporation and TAWA SUPERMARKET, INC. dba 168 MARKET, who may use, maintain,
7 distribute or sell Covered Products ("Downstream Defendant Releasees"), of all claims for alleged
8 or actual violations of Proposition 65 for alleged exposures to the Listed Chemicals from the
9 Covered Products manufactured, distributed or sold by ORIENTAL up through the Effective Date
10 as set forth in the Notices and Complaint. ORIENTAL and Defendant Releasees' compliance with
11 this Consent Judgment shall constitute compliance with Proposition 65 with respect to alleged
12 exposures to the Listed Chemicals from the Covered Products sold by Defendant Releasees or
13 Downstream Defendant Releasees after the Effective Date. Nothing in this Section affects CAG's
14 right to commence or prosecute an action under Proposition 65 against any person other than
15 ORIENTAL, Defendant Releasees, or Downstream Defendant Releasees. ORIENTAL, Defendant
16 Releasees and Downstream Defendant Releasees are hereafter collectively referred to as the
17 "Released Parties".

18
19 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
20 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
21 indirectly, any form of legal action and releases all claims, including, without limitation, all
22 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
23 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
24 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
25 contingent (collectively "Claims"), against the Released Parties arising from any actual or alleged
26 violation of Proposition 65 or any other statutory or common law claim regarding the Covered
27 Products manufactured, distributed or sold by the Released Parties through the Effective Date

1 regarding any actual or alleged failure to warn about exposure to the Listed Chemicals from the
2 Covered Products. In furtherance of the foregoing, CAG on behalf of itself only, hereby waives
3 any and all rights and benefits which it now has, or in the future may have, conferred upon it with
4 respect to Claims regarding the Covered Products manufactured, distributed or sold by the
5 Released Parties through the Effective Date arising from any violation of Proposition 65 or any
6 other statutory or common law regarding the failure to warn about exposure to the Listed
7 Chemicals from the Covered Products by virtue of the provisions of section 1542 of the California
8 Civil Code, which provides as follows:
9

10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
11 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
12 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
13 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
14 SETTLEMENT WITH THE DEBTOR.
15

16 CAG understands and acknowledges that the significance and consequence of this waiver of
17 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
18 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
19 violation of Proposition 65 or any other statutory or common law regarding the Covered Products
20 manufactured, distributed or sold by the Released Parties through the Effective Date regarding the
21 failure to warn about actual or alleged exposure to the Listed Chemicals from the Covered
22 Products, CAG will not be able to make any claim for those damages, penalties or other relief
23 against the Released Parties. Furthermore, CAG acknowledges that it intends these consequences
24 for any such Claims arising from any violation of Proposition 65 or any other statutory or common
25 law regarding the failure to warn about exposure to the Listed Chemicals from the Covered
26 Products as may exist as of the date of this release but which CAG does not know exist, and which,
27

1 if known, would materially affect their decision to enter into this Consent Judgment, regardless of
2 whether their lack of knowledge is the result of ignorance, oversight, error, negligence, or any
3 other cause.

4 **6. ENTRY OF CONSENT JUDGMENT**

5 6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
6 California Health & Safety Code § 25249.7(f). The Parties will act in good faith in order to obtain
7 the Court's approval of this Consent Judgment. Upon entry of the Consent Judgment, CAG and
8 ORIENTAL waive their respective rights to a hearing and trial on the allegations in the Notices
9 and Complaint.

10 6.2 If this Consent Judgment is not approved in full by the Court: (a) this Consent
11 Judgment and any and all prior agreements between the Parties merged herein shall terminate and
12 become null and void, and the actions shall revert to the status that existed prior to the execution
13 date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
14 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
15 have any effect, nor shall any such matter be admissible in evidence for any purpose in this Action,
16 or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to
17 modify the terms of the Consent Judgment and to resubmit it for approval.

18 **7. MODIFICATION OF JUDGMENT**

19 7.1 This Consent Judgment may be modified only upon written agreement of the
20 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
21 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

22 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
23 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

24 **8. RETENTION OF JURISDICTION**

25 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
26 of this Consent Judgment under Code of Civil Procedure § 664.6.
27

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

9. SERVICE ON THE ATTORNEY GENERAL

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

10. ATTORNEY FEES

10.1 Except as specifically provided in Sections 4.1.3 and 8.2, each Party shall bear its own attorneys' fees and costs in connection with the claims resolved in this Consent Judgment.

11. GOVERNING LAW

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

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

11.3 The Parties, including their counsel, have participated in the preparation of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This

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

8 **12. EXECUTION AND COUNTERPARTS**

9 12.1 This Consent Judgment may be executed in counterparts and by means of facsimile
10 or portable document format (pdf), which taken together shall be deemed to constitute one
11 document and have the same force and effect as original signatures.

12 **13. NOTICES**

13 13.1 Any notices under this Consent Judgment shall be by delivery of First Class Mail.

14 If to CAG:

15 Reuben Yeroushalmi, Esq.
16 Yeroushalmi & Yeroushalmi
17 9100 Wilshire Boulevard, Suite 240W
Beverly Hills, CA 90212

18 If to Defendant ORIENTAL FOODBANK, INC.:

19 Curtis C. Jung
20 JUNG & YUEN, LLP
21 888 S. Figueroa Street, Suite 720
Los Angeles, CA 90017

22 **14. AUTHORITY TO STIPULATE**

23 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
24 by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf of
25 the Party represented and legally to bind that party.

1 AGREED TO:

AGREED TO:

2
3 Date: Nov 26, 2019

Date: NOV, 26, 2019

4 Michael Marcus Eza Han

6
7 Name: Michael Marcus Name: EZA HAN

8
9 Title: Director Title: DIRECTOR

10 CONSUMER ADVOCACY GROUP,
11 INC.

ORIENTAL FOODBANK, INC.

13 IT IS SO ORDERED.

14
15 Date: 2/14/20



Gregory Keosian

JUDGE OF THE SUPERIOR COURT

Gregory Keosian / Judge